Employer Sanctions And U.S. Labor Markets: Second Report

Immigration Policy and Research
Report 3

U.S. Department of Labor
Bureau of International Labor Affairs
1990

This series is published by the Division of Immigration Policy and Research, Bureau of International Labor Affairs.

Employer Sanctions And U.S. Labor Markets: Second Report

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July 1991

This report was prepared by the
Division of Immigration Policy and Research as
part of the Department of Labor's submission to
The President's Second Report on the Implementation and Impact of Employer Sanctions.

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FOREWORD

Employer Sanctions and U.S. Labor Markets: Second Report was prepared as the Department of Labor's submission to *The President's Second Report on the Implementation and Impact of Employer Sanctions*. It was authored by staff members of the Division of Immigration Policy and Research, Bureau of International Labor Affairs, U.S. Department of Labor (DOL).

The President's report was mandated by section 402 of Title IV of the Immigration Reform and Control Act of 1986 (IRCA). The Department of Labor's submission addresses the impact of employer sanctions on "the employment, wages, and working conditions of United States workers and on the economy of the United States."

The report carefully examines several key facets of this issue:

- Recent changes in employer compliance with the paperwork provisions of IRCA;
- The link among likely employers of unauthorized aliens, IRCA paperwork compliance, and Federal labor law violations;
- Employment practices in response to IRCA; and
- The effects of enforcement strategies in achieving IRCA's goals.

This study is the second of three DOL reports on the labor market effects of employer sanctions. As was the case with the first report, its findings are provisional. Additional time is needed to evaluate the effects of sanctions more fully. I look forward to the final report in this series which promises to continue to enhance our understanding of this important question.

Shellyn G. McCaffrey
Deputy Under Secretary
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ACKNOWLEDGEMENTS

In our preparation of this report we benefitted from information, suggestions, and the critical reading of earlier drafts by several persons. We would especially like to acknowledge Paige Armstrong, Tom Bruening, Bob DeVore, John Fraser, Mike Hoefer, Mike Horrigan, Jay Jennings, Charlie Keely, Sherrie Kossoudji, David North, Jorge Perez-Lopez, Gary Reed, Brian Shea, Martina Shea, Al Stapleton, Dan Sweeney, Jay Teachman, and Myron Zeitz. Lidia Soto Harmon coordinated the production of this manuscript with assistance from Jack Dausman and final typesetting by Bill Harrison. Of course, any errors of fact or interpretation are our own.

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EXECUTIVE SUMMARY

Background

The Immigration Reform and Control Act of 1986 (IRCA) marked the first major revision of U.S. immigration law in decades. This law's enactment stemmed from recognition of the detrimental effects of illegal immigration on our nation and the role the U.S. job market plays in attracting illegal immigration.

The adoption of employer sanctions represented an essential step toward regaining an orderly immigration process. An effective sanctions program, while reducing the "pull" factor of the U.S. labor market, cannot be expected to completely eliminate illegal migration, which also results from complex social and economic forces in sending countries. Tolerance of illegal immigration erodes respect for law and undermines legal immigration. Deterring illegal immigration remains a national goal to maintain the integrity of our legal system, eliminate the exploitation of unauthorized workers, and reduce associated criminal activity.

Interim Report

Section 402 of IRCA directed the President to submit annual reports in the three years following implementation of the sanctions provisions on the implementation and adequacy of these provisions and the impact of employer sanctions on illegal immigration and the labor market. The President's first report on employer sanctions recognized that although sanctions have a deterrent effect on illegal immigration, they must continue to be part of a broader strategy to stop the flow of illegal immigration into the United States. The report underscored the fact that the success of employer sanctions depends upon changing the established business practices of those industries which have long been reliant on illegal workers. That report stressed that persons expecting immediate measurable progress in what is essentially the establishment of a new employment standard would likely be disappointed.

NOTE: The first two paragraphs were written principally by the Immigration and Naturalization Service.

However, preliminary data after the first full year of implementation showed high employer compliance with the law. The employer sanctions provisions of IRCA were not fully implemented until December 1, 1988—just two years before the completion of this second report. Thus, as was the case with the first report, the findings of this analysis must also be viewed as provisional. To improve the effectiveness of the employer sanctions provisions, both the law and the implementation strategies should be continually fine-tuned over time. This report on the implementation of the employer sanctions provisions is the second report mandated under Section 402.

Employer Compliance with the Employer Sanctions Provisions

The administrative records of the Department of Labor's Employment Standards Administration (ESA), although not representative of the national business community, and do not include INS compliance data, indicate little apparent change in either the overall rate of compliance or the geographic pattern of compliance between fiscal year 1987 and fiscal year 1990. However, there are now fewer findings of nonexistent records and more of incomplete records. Although the firms in question remain technically noncompliant, this suggests that they are becoming increasingly aware of the employment eligibility verification provision and are attempting to fulfill it.

Apprehensions at the Southern Border

This report updates last year's report in several areas. That report found that one of the indicators of illegal migration, apprehensions at the border, which had reached an historic high in the months prior to IRCA's passage, initially decreased after the passage of IRCA and continued to decrease through fiscal year 1989. Although the majority of this decline could be attributed to IRCA's legalization programs, many also interpreted the decline as an indication of the success of the employment sanctions provisions and increased INS border enforcement. However, the increase in fiscal year 1990 apprehensions to 1,103,000 makes it difficult to draw conclusions about the long-term impact of sanctions.

Although apprehensions are admittedly imperfect indicators of the movement of illegal aliens across the U.S. border, many believe the recent levels of apprehensions may reflect increased flows, implying that some of the initial deterrent effects of IRCA may have worn off. We will continue to monitor apprehension levels for long-term deterrent effects.

Assessing Employer Compliance with Workplace Regulations

It has long been accepted that U.S. employment opportunities are the primary motivation behind the migration of many, if not most, illegal aliens to the United States. The authors of IRCA anticipated that IRCA's employer sanctions provisions would reduce the number of illegal aliens in the United States and would improve employment opportunities for U.S. work-

ers, perhaps also fostering better wages and working conditions. It is still too early to judge the impact of IRCA on U.S. workers' wages. Nonetheless, because of the presumed link between undocumented employment and labor law violations, the findings of field investigations by the Employment Standards Administration's Wage and Hour Division (ESA/WHD) are reviewed for insights on compliance with both IRCA and the Fair Labor Standards Act (FLSA). Often the same firm violates both laws; fully 43 percent of the ESA/WHD nonagricultural firms investigated were found to be violating both the FLSA and IRCA.

Enforcement records contain information on the location, industry, and size of investigated firms. As a result of the Department of Labor's Special Targeted Enforcement Program (STEP), these records also identify firms that ESA/WHD officials believe to be relatively more likely to employ unauthorized workers. Despite the assumption by some that employers of unauthorized workers are accepting fraudulent documents to satisfy IRCA's employment verification requirement, STEP firms were consistently identified as having more verification violations than other firms. In fact, both IRCA and FLSA violations are more prevalent in STEP firms. Unfortunately, the direct link between the employment of unauthorized workers and violations of labor law cannot be documented from these records alone, because ESA/WHD officials do not investigate actual employment of undocumented workers.

ESA's enforcement records reveal a number of relationships between certain characteristics of firms and compliance with IRCA, although enforcement records do not contain information on all characteristics of interest. For example, indicators of the strength of the local economy, the prevalence of aliens and/or unauthorized workers in the labor market, unionization, prevailing wages, and other relevant factors would greatly enhance an assessment of compliance behavior. In addition, both variations in enforcement effort and in the acceptance of counterfeit documents may be affecting the number of violations found. Incorporating new measures and refining existing indicators of relevant variables in future analyses should further our understanding of the compliance with employer sanctions.

Employer Responses to Employer Sanctions

This report analyzes GAO's 1989 survey of firms, extending the analysis of GAO's 1988 survey presented in the President's first report. Both IRCA's implementation and firm characteristics are examined with regard to their impact on compliance with employer sanctions.

Labor Force Strategies

IRCA appears to be having its intended effect of raising wages. Firms that had been relying on unauthorized workers appear to be responding to shifts in the availability of those workers and to the risk of sanctions. Specifically, employers reporting previous routine employment of unauthorized workers—i.e., firms now at greater risk of sanctions—are found to be more likely to have turned to outside contractors and/or increased wages than those

firms not reporting unauthorized workers. Firms investigated by INS for illegal employment practices are also more likely to report either of these labor force strategies.

Discriminatory Behavior

As discussed in the report of the Attorney General's Task Force on IRCA-Related Discrimination, both employers of Hispanics and routine employers of unauthorized workers are more likely to report a practice of national origin discrimination. These employers may be screening some workers on the basis of foreign appearance to offset their risk of sanctions. Screening on citizenship status, however, is not related to the ethnic or legal composition of the firm's workforce.

Impact of Full Implementation of IRCA

Full implementation of IRCA's employer sanctions provisions increases the likelihood that employers will utilize outside contractors and/or increase wages. The full array of implementation efforts measured by the GAO survey (education, INS investigations, and compliance with employment eligibility verification requirements) has a dramatic effect on reducing discrimination: it halves national origin and citizenship discrimination by employers. This analysis indicates that education and employer compliance with employment eligibility verification procedures seem to be productive methods for combatting discriminatory hiring practices.

Conclusions

Because it has been little more than two years since IRCA's employer sanctions provisions became fully effective, it is not possible to offer a definitive assessment of the law's effectiveness. INS is continuously refining the program and pursuing its educational campaign in coordination with the Office of Special Counsel. However, a clear-cut picture of the success of employer sanctions does not yet emerge from the varied components of our analysis. Early data on apprehensions were encouraging, but the recent increase in apprehensions makes it difficult to draw long-term conclusions. On the other hand, our findings on employer compliance based on ESA and GAO data suggest that firms are becoming increasingly aware of IRCA's employment eligibility provision and are attempting to fulfill it.

Further analysis of the ESA data shows that firms investigated for violations of the Fair Labor Standards Act were likely to be violating IRCA. Indeed, two-thirds of the firms violating FLSA statutes also fail to record work authorization documents. This linkage suggests that these firms are a valuable target for the enforcement of IRCA. The third report will examine this issue in more detail.

Analysis of the 1989 GAO survey of U.S. employers shows that the law appears to be having the greatest labor market impact on those firms that it was intended to affect, i.e., the routine employers of unauthorized workers. These firms, although more likely to report discriminating against

foreign-appearing workers, responded very positively to the various enforcement and educational elements of IRCA. Those responses included changes in labor market strategies such as increasing wages to attract authorized workers and significantly reducing reported discriminatory practices.

Finally, the study of the European experience underscores the transitional nature of our findings. Persistence in enforcement, consistency in the application of the law, and patience about its results are not the only hallmarks of the European experience; they are indispensable ingredients to maintaining effective pressure on employers to comply with the necessary restrictions on the employment of unauthorized aliens. Sustained efforts to deal with fraudulent documentation should be coordinated with a continual fine-tuning and enforcement of the law.

CHAPTER 1: INTRODUCTION

As described more fully in the first Presidential report, in November 1986 Congress passed and the President signed into law the Immigration Reform and Control Act of 1986 (IRCA), including a variety of measures to control illegal immigration by stemming future flows of illegal aliens, and providing legal status for certain illegal aliens already in the United States.

To monitor the effectiveness of several new provisions included in IRCA, Congress mandated that the General Accounting Office (GAO) and the Executive Branch prepare reports at specified intervals. Congress was most interested in reviewing progress in implementing employer sanctions[1] and the effect of those provisions on reducing illegal immigration to the United States. In IRCA, Congress required that GAO prepare three reports, to be submitted annually for each of the three years following enactment, on the adequacy of implementation of the employer sanctions provisions and the extent to which these provisions resulted in either an unnecessary burden on employers or in discrimination against eligible workers. Section 402 directed the President to submit three annual reports in each of the three years following implementation of the sanctions provisions, on the implementation and adequacy of these provisions and the impact of employer sanctions on illegal immigration and the labor market.[2]

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[1] Section 274A, added to the Immigration and Nationality Act by IRCA, made it unlawful for a person or entity to hire or to recruit or to refer for a fee an alien, knowing the alien is unauthorized to work in the United States, or to continue to employ an alien knowing the alien is, or has become, unauthorized with respect to such employment in the United States. It further required employers to verify and document each individual's identity and eligibility for employment in the United States. The Immigration Act of 1990, signed into law on November 29, 1990, eliminated the requirement that recruiters and referrers for a fee complete the employment verification procedures, with the exception of agricultural associations, agricultural employers, and farm labor contractors.

[2] Full implementation, including application of sanctions to employers engaged in seasonal agricultural services under Section 274A(i)(3) of the Act, occurred in December 1988.

NOTE: The first four paragraphs were written principally by the Immigration and Naturalization Service.

This report on the implementation of the employer sanctions provisions is the second report mandated under Section 402 of IRCA. Specifically, Section 402 of IRCA requires that:

(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

(3) an analysis of the impact of the enforcement of that section on:

(a) the employment, wages, and working conditions of United States workers and on the economy of the United States;

(b) the number of aliens entering the United States illegally or who fail to maintain legal status after entry; and

(c) the violation of terms and conditions of nonimmigrant visas by foreign visitors.

The first report under this Section discussed in detail the background of IRCA and the implementation of the employer sanctions, employment verification, and anti-discrimination provisions by the Immigration and Naturalization Service (INS) and the Office of the Special Counsel for Immigration Related Unfair Employment Practices, in the Department of Justice, and the Employment Standards Administration in the Department of Labor. It also evaluated the adequacy of the employment verification system and the status of changes to that system and relating demonstration projects. Based on available data, it analyzed the impact of employer sanctions on illegal alien flows and population and evaluated the labor market context for employer sanctions. Finally, it examined alternative rates of compliance with the sanctions and employment verification provisions and provided preliminary results of a wide range of labor market impact studies being undertaken by the Department of Labor.

Overview of Important Trends Since the First President's Report

Some of the data released since the completion of the first President's report give grounds for cautious optimism. Whereas the GAO concluded from its 1988 employer survey that 50 percent of U.S. employers were meeting the employment eligibility verification requirements of IRCA (GAO, 1988), their conclusion based on the 1989 survey was that 65 percent of employers were in compliance (GAO, 1990). These percentages are not directly comparable across the two surveys. However, when adjustment is made for differences in estimation procedure, the GAO data still suggest a probable increase from about 58 percent to 65 percent during this interval.

Among firms investigated by the Department of Labor, Employment Standards Administration, compliance patterns appear to have changed little during this interval.[3] There were notable changes, however, within the "apparently noncompliant" category, where there are now fewer findings of nonexistent records and more of incomplete records (Table 1.1). Although the firms in question remain technically noncompliant, this suggests that they are becoming increasingly aware of the employment eligibility verification provision and are attempting to fulfill it.

The ESA Regional compliance patterns have also changed little. Compliance is somewhat more common in the Boston and San Francisco regions than it was at the time of the earlier report, and it remains lowest in the Atlanta region (Figure 1.1). Nonetheless, given that certain firms' hiring and employment practices must be reorganized to accommodate IRCA's provisions, it is encouraging to note that during the period of observation six out of ten DOL regions reported improvements in overall compliance; only two showed noticeable declines.

Less encouraging has been the rise in border apprehensions, from 891,000 in fiscal year 1989 to 1,103,000 during fiscal year 1990. This increase is only partially explained by increased INS border enforcement. Many believe that the rise in apprehensions may reflect increased movement across the U.S. border (Bean et. al., 1990), implying that some of the initial deterrent effect of IRCA may have worn off.

The Second President's Report

This second report, which focuses on the implementation and impact of Section 274A,[4] concentrates on the refinements of procedures implemented soon after passage and progress since the first report was completed. The labor market research extensively outlined in the first report continues. Although this report provides additional preliminary findings, more conclusive results will be possible at the culmination of these projects.

This report written by the Department of Labor, reflects information available through November 1990.

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[3] Because ESA investigates firms suspected of violating labor laws, it is not surprising that the compliance rate of those firms has not increased as rapidly as that of the larger business community.

[4] Section 274B, relating to the anti-discrimination provisions, is outside the mandate of this report. In its review of the implementation and effectiveness of employer sanctions, the GAO found a "wide spread pattern of discrimination." [*Immigration Reform: Employer Sanctions and the Question of Discrimination* (GAO/GGD-90-62, March 1990), p. 71.] Issues raised by the GAO report were addressed by a Task Force created by Section 101(K)(1) of IRCA, which was appointed by the Attorney General and chaired by the Assistant Attorney General for Civil Rights, John Dunne. The *Report and Recommendations of the Task Force on IRCA-Related Discrimination* was submitted to Congress on September 19, 1990. The Task Force proposed that efforts to deter discriminatory practices be carried out on three fronts—strengthening the mechanisms for enforcing the anti-discrimination provisions of IRCA, clarifying and simplifying the process by which an employer checks an employee's documents, and educating employers and employees about the specific provisions of the law.

Table 1.1 Employment Eligibility Verification Findings of the Employment Standards Administration, FY87 – FY90

Employment Verification Finding	Total ESA			Wage and Hour Division[1]			Office of Federal Contract Compliance[2]		
	FY87-FY88[3]	FY89	FY90	FY87-FY88[3]	FY89	FY90	FY87-FY88[3]	FY89	FY90
Total I-9 Inspections	75,067	46,959	48,137	64,886	40,755	42,223	10,181	6,204	5,914
Percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apparent Compliance	37.8	37.2	38.3	34.1	34.2	35.8	61.1	56.6	56.4
Apparent Noncompliance	49.0	50.4	49.0	50.9	51.7	50.0	36.7	41.3	41.6
Nonexistent records	28.6	26.6	22.0	32.3	30.0	24.7	5.1	4.5	3.0
Incomplete records	19.7	23.1	26.3	18.1	21.2	24.7	29.9	35.4	37.6
Other noncompliance	0.7	0.7	0.6	0.6	0.5	5.7	1.6	1.5	1.1
Compliance Undetermined	13.2	12.5	12.8	15.0	14.0	14.3	2.3	2.1	2.0
Records elsewhere	7.0	7.4	7.9	7.9	8.3	8.8	1.3	1.5	1.5
No advance notice	4.6	3.7	3.5	5.3	4.2	3.9	0.2	0.2	0.0
Suspect documents	0.1	0.1	0.0	0.1	0.1	0.0	0.1	0.0	0.1
Other undetermined	1.5	1.4	1.3	1.7	1.5	1.5	0.7	0.4	0.4

[1] The Wage and Hour Division enforces the Fair Labor Standards Act, as well as several other acts regulating wages and hours in Government contracts and farm labor.

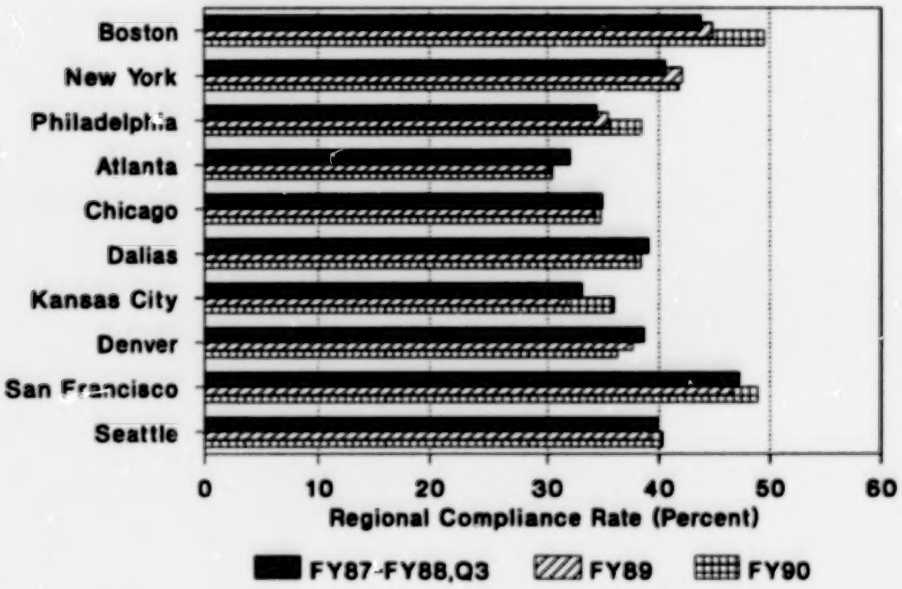
[2] The Office of Federal Contract Compliance Programs enforces employment anti-discrimination and affirmative action regulations for Government contractors and subcontractors.

[3] These data, from the first President's report on Employer sanctions, cover FY87 through the third quarter of FY88.

Note: Percentages may not add to totals due to rounding.

Source: ESA, Wage and Hour Management Information System.

Figure 1.1 – ESA Compliance Rates by Region, FY87 to FY90



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CHAPTER 2: ASSESSING EMPLOYER COMPLIANCE WITH WORKPLACE REGULATIONS

One of the key motivations behind enactment of IRCA was the perception that unauthorized aliens were undercutting the job opportunities, earnings, and working conditions of U.S. workers.[5] As the illegally resident population grew throughout the 1970s and 1980s, many social scientists—including authors of several case-studies of industries that routinely employ unauthorized workers—maintained that persons illegally resident in the United States were often accepting wages and working conditions less attractive than those received by their authorized coworkers (Runsten, 1986; GAO, 1988; Griffith and Runsten, 1991; North, 1990).[6]

Another body of scientific literature appears to reinforce these findings. Sociologists, anthropologists and labor economists studying the labor market behavior of immigrants agree that the labor market expectations of newly arrived aliens, both legal **and** illegal, tend to be more modest than those of native-born workers. At least initially, such workers often accept lower wages, fewer benefits, longer hours, and/or less agreeable working conditions than do other U.S. workers (Piore, 1979; Papademetriou, 1983; Tienda, 1983; Papademetriou and DiMarzio, 1986; Pessar, 1987; Chiswick, 1988). On the basis of this evidence, some analysts conclude that the unauthorized workers' tolerance of substandard wages and working conditions has fostered labor market exploitation (North, 1990).

Employer sanctions are intended to severely curtail the employment of unauthorized workers. As noted previously, most U.S. employers now

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[5] The term U.S. workers encompasses not only the native-born, but all persons with U.S. employment rights. These include immigrants (i.e., lawful permanent residents), certain holders of temporary visas (such as temporary workers and certain students), refugees, asylees and asylum seekers, persons in deportation proceedings and those granted extended voluntary departure status.

[6] For a summary and evaluation of this literature see DOL (1989:Chapter 4)

appear to be complying with the new law. However, there is still a large percentage of employers who remain noncompliant. The reasons for their failure to comply are not adequately understood.

This chapter examines Federal enforcement records in search of evidence of a possible link between violations of IRCA's employment eligibility verification requirement and certain unfair labor practices. The data used are drawn entirely from the administrative records of the Department of Labor's Employment Standards Administration, Wage and Hour Division (ESA/WHD).[7] The Wage and Hour Division is charged with enforcing compliance with several major labor laws, including the Fair Labor Standards Act (FLSA).[8] That agency's diverse monitoring and enforcement responsibilities allow it to examine systematically a firm's record and assess the following relevant aspects of employer behavior: (a) compliance with IRCA employment verification requirements; and (b) compliance with minimum wage, overtime and child labor statutes.

There is currently no way to identify which ESA/WHD-inspected firms have actually employed unauthorized workers.[9] Nor are there any reliable baseline data with which to determine the presence and exact location of illegal aliens in local labor markets.

The dearth of systematic information on this group of workers has recently been addressed through another of IRCA's programs: legalization. One of the most fortuitous outcomes of that program was a unique opportunity to learn more about this population. IRCA enabled Federal agencies, for the first time, to ask many important questions of a large sample of individuals who had been living in the United States illegally since before January 1, 1982. In 1989, shortly after the legalization application period closed, the Immigration and Naturalization Service (INS) sponsored a random personal interview survey of 6,200 legalization applicants. This Legalized Population Survey explored many critical aspects of the applicants' labor market behavior prior to legalization, including detailed information on the various jobs they held while in an illegal status.

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[7] While ESA's Office of Federal Contract Compliance Program (OFCCP) also monitors compliance with IRCA's employment authorization verification requirements, it does not monitor compliance with the Fair Labor Standards Act, the focus of this chapter. Therefore, OFCCP data are excluded from this discussion.

[8] Eighty percent of all ESA/WHD investigative effort is focused on FLSA cases. The remainder concerns Federal contracts covered by the Davis-Bacon Act (construction), the McNamara-O'Hara Service Contract Act (services) and the Walsh-Healey Public Contracts Act (manufacture of furnishing supplies and equipment)—as well as violations of such farm labor statutes as the Migrant and Seasonal Agricultural Worker Protection Act. Each ESA/WHD investigation includes a review of the firm's IRCA-mandated employment verification records (i.e., I-9 forms).

[9] The Wage and Hour Division does not evaluate the legal status of employees. Only INS is authorized to make this determination. Thus, ESA/WHD records do not provide definitive evidence of unauthorized employment in the firm. However, as a result of the agency's Special Targeted Enforcement Program (STEP), case records do indicate the relative likelihood of unauthorized employment, based on previous ESA and INS findings in similar local firms.

Table 2.1 – Substandard Wages of Legalization Applicants and the Share of Wage and Salary Workers Subject to Minimum Wage and Overtime Provisions of the FLSA, by Industry

Sector and Industry	Percentage of Legalization Applicants Within Industry Who Are Paid	Estimated Percentage of Employed Wage and Salary Workers Within Industry Who Are Not Subject to	
	Less Than $3.35 per hour	Minimum Wage	Over-time
ALL SECTORS	9	9.9	14.7
PRIVATE SECTOR	NA	11.9	16.5
Agriculture	13	58.4	95.8
Mining	0	0.5	1.4
Construction[1]	2	0.4	1.2
Manufacturing	5	2.4	3.6
Transportation and Public Utilities	6	0.6	31.6
Trade Total[2]	9	13.2	18.8
Wholesale	NA	17.4	20.8
Retail	NA	11.8	18.2
Finance, Insurance, Real Estate	6	20.7	20.7
Services Total	18	17.3	18.2
Private Household	NA	32.9	39.8
All Other Services	NA	16.5	17.1
PUBLIC SECTOR	NA	0.0	6.1

NA:Data not available.

[1] FLSA eligibility data pertain to contract construction.

[2] Outside sales workers" are excluded.

Source: Legalization applicant data (North, 1990); FLSA coverage data effective September 1988 (USDOL/ETA, 1989).

The wage profile of this sample of aliens at the time of application indicates that 9 percent of all general legalization applicants earned less than the minimum wage of $3.35 per hour. By comparison, 2 percent of all U.S. workers were earning less than $3.35. This finding raises the possibility of unfair labor practices.[10] It does not, however, prove the existence of a direct link between illegal status and the underpayment of wages.

In fact, in most sectors where unauthorized workers are concentrated—such as agriculture, private household and other personal services, and retail trade—a disproportionate share of all jobs fall outside the purview of minimum wage protection (Table 2.1).[11] The coverage of overtime premiums is even less complete, and in one high-alien industry, agriculture, is almost nonexistent. Hence, although the receipt of minimum wage and overtime premiums was less prevalent among legalization applicants than among

[10] North (1990) cites these figures as evidence that undocumented workers are vulnerable to wage exploitation.

[11] The protection of FLSA extends to workers directly or indirectly involved in interstate commerce, and in some instances depends on the employer's total volume of business or sales. See Appendix A-5 for details.

U.S. workers overall, one possible explanation may have been that group's concentration in jobs outside of the purview of the FLSA.

If a job is covered by FLSA, the wages of the individual holding that job are subject to minimum wage and overtime regulations[12] **regardless of whether that worker is authorized to hold a job in the United States.**[13] However, the FLSA does not protect illegal aliens from deportation. As a result, unauthorized workers often fail to report illegal labor practices because of fear of deportation (DOL, 1980b:1). Their tolerance of such practices is thought to undermine not only their own job opportunities and wages, but also those of workers entitled to hold jobs in the United States (DOL, 1989:98).

In many instances, when employers cannot attract authorized workers with a given set of wages or working conditions, they can find unauthorized aliens willing, if not eager, to fill those jobs. Presumably, some employers may take advantage of the legal vulnerability of these new employees to circumvent one or more Federal statutes such as the minimum wage and overtime laws, health and safety regulations, social security, and unemployment compensation. Some of these same employers may also disregard IRCA's employment eligibility verification requirement altogether or might accept and record documents they know to be counterfeit (Bach and Brill, 1991).[14] However, it is extremely difficult to test these hypotheses without definitive evidence regarding the presence of unauthorized workers in specific firms.

The Enforcement of Labor Law

Section 101(f)(2) of IRCA assigns enforcement of that law's employer sanctions provisions to the Attorney General.[15] However, IRCA's implications extend beyond immigration law and into labor law. The employment authorization verification requirement constitutes a new employment standard with which U.S. firms must comply. Section 101(a)(3) of IRCA assigns **both** to the Department of Justice **and** the Department of Labor responsibility for monitoring compliance with the eligibility verification requirement.[16] This joint authority markedly ex-

[12] Unless the job is specifically exempt.

[13] Victims of minimum wage and/or overtime violations are entitled to recover backwages, regardless of their legal status.

[14] Although failure to complete the I-9 forms constitutes a violation, acceptance of documents that appear genuine—though they may be counterfeit—constitutes an affirmative defense against charges of knowingly hiring unauthorized workers. The Immigration Act of 1990 (P.L. 101-649) is attempting to address part of this problem by targeting the production, distribution, and willful acceptance of counterfeit documents for INS enforcement attention.

[15] "Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States...."

pands the Federal Government's field enforcement infrastructure, and hence its ability to monitor the verification compliance of U.S. employers.[17]

Within the Department of Labor, both ESA's Wage and Hour Division and its Office of Federal Contract Compliance monitor firm compliance with IRCA's eligibility verification requirements in the context of their investigations of other possible labor law violations. However, because OFCCP does not enforce the Fair Labor Standards Act on which we are focusing, its compliance findings are not presented in the discussion which follows.

The ESA/WHD administrative records for the first 27 months of full enforcement are examined for insights into the putative relationship between violations of IRCA's employment eligibility verification provisions and violations of the FLSA.[18] Data from the Wage and Hour Division's Special Targeted Enforcement Program (STEP) are studied for evidence of systematic differences in the compliance behavior of firms thought more, and those thought less, likely to employ unauthorized workers.[19]

The ESA/WHD's 1,057 investigators visit more than 50,000 firms annually. They probe workers' complaints, monitor employer compliance with specific laws, and distribute relevant educational materials.[20] At the outset of each ESA/WHD on-site investigation, the investigator reviews the firm's employment eligibility verification forms. He or she must determine whether all appropriate documents have been checked and whether they have been accurately and completely recorded for each employee hired since IRCA's enactment.[21]

More than 60 percent of the firms investigated and receiving a "compliance rating" are judged to have violated some aspect of the verification require-

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[16] "After completion of such [verification] form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or the Department of Labor...."

[17] This expands staff engaged in IRCA inspections from 400 INS field officers to about 2000 Federal investigators, including 1057 ESA/WHD and 550 ESA/OFCCP Investigators.

[18] Data pertain to those nonagricultural investigations opened and closed by ESA/WHD between October 1, 1987 and January 31, 1990, from which both IRCA and FLSA compliance findings could be obtained.

[19] The ESA/WHD makes a special effort to enforce the FLSA and other labor statutes in sectors where unauthorized aliens may be employed. It is these firms that are thought to be most likely to violate labor laws. The STEP Program conducts actions in local industries reputed to employ unauthorized aliens. Patterned after the Carter Administration's Employers of Undocumented Workers (EUW) program, the STEP program was initiated by the Reagan Administration in January 1982. However, few additional resources have been channelled into STEP enforcement. Hence the STEP program represents more of an enforcement emphasis than an intensification of overall enforcement activity.

[20] In addition to their on-site inspections, investigators annually resolve, or "conciliate," over 30,000 lesser violations by telephone. This obviates the need for on-site investigation.

[21] When such a judgment, or compliance rating, is impossible to reach, as is the case in about 13 percent of all investigations, the firm receives a "compliance undetermined" rating. The reasons for this rating include inability to examine records maintained at another site, a firm's refusal to grant access to records without the requisite three-day notice, suspect documents, and other irregularities.

ment.[22] Approximately equal proportions are found to have "nonexistent records" and to be "apparently compliant". The Department of Labor reports all IRCA violations identified by its field staff to the INS for disposition.[23]

Key Operational Definitions

The case records of ESA's Wage and Hour Division have never been examined before for linkages between IRCA and FLSA violations. In that sense, our study is exploratory. It follows four discrete examination paths: (1) the relevant data items being registered on existing case records; (2) the concepts that underlie these data; (3) data items, not included in the case records, that are necessary for a systematic analysis of employer compliance with IRCA; and (4) a review of existing case-record evidence regarding linkages between the suspected presence of unauthorized workers, violations of IRCA's employment eligibility verification requirement, and violations of the FLSA. In the President's third report on employer sanctions, due next year, these relationships will be explored more systematically.

The present analysis necessarily excludes all cases with missing or indeterminate compliance ratings, as well as all data from the agricultural sector.[24] At the outset, a few key concepts must be defined:

Coverage

The universe covered by IRCA's employment eligibility verification requirement overlaps, but is distinct from, that covered by the FLSA.

- IRCA's employment verification provisions apply to all persons hired since that act became law on November 6, 1986.
- The protection of the FLSA has no similar temporal cutoff but does depend on the firm's (or worker's) involvement in interstate com-

[22] This level of noncompliance is not surprising. Similar violation ratios have been reported in other enforcement programs. One detailed study of compliance with Occupational Safety and Health regulations found that 70 percent of the firms undergoing their first complete investigation had at least two violations (DOL, 1980b).

[23] If the INS pursues the case and the firm in question is found to have knowingly hired unauthorized workers, the INS levies sanctions against that employer. As noted earlier, the field resources of the INS are more limited than those of ESA. Hence, relatively few of the ESA referrals are systematically followed up. During the first nine months of FY 1989, the last period for which comparable figures are available, ESA referred 17,435 "apparently noncompliant" firms to the INS. During the same period, INS pursued only 3,436 such investigations, many of which had come to that agency's attention from other sources. Of these, 1,863 led to the assessment of a fine. Only 1,189 final order fines were collected. Thus, the ratio of final order fines to noncompliant ratings during that period was about 7 percent (DOL, 1991: Chapter 9).

[24] A disproportionate share of agricultural firms receive an indeterminate IRCA compliance rating because they have not received the requisite three-day notice and, as a result, have refused the Government access to their verification records. Furthermore, FLSA coverage is so low in the agricultural sector that few such firms are at risk of FLSA violation.

merce; it may also depend on the volume of business conducted (DOL, 1987).

- Approximately 90 percent of all U.S. wage and salary workers are "subject to" (i.e., covered by and not exempt from) minimum wage provisions; 85 percent are subject to overtime pay regulation.[25]

Compliance

The Department of Labor uses the term "compliance" to denote "the absence of violation." Thus, to understand the meaning of compliance, it is necessary to identify the behaviors that constitute IRCA and FLSA violations.

- **IRCA Violations**: IRCA prohibits employers from hiring unauthorized workers. It requires employers to check and record each new worker's work authorizing documents on a form created especially for that purpose, and designated the "I-9" form. Although ESA/WHD investigators do not inquire about the legal status of specific workers, IRCA still affords them a legal basis on which to evaluate and identify IRCA violations.

  — Firms able to show I-9 evidence of having examined and recorded the appropriate documents for all post-IRCA hires, as well as those firms with no new employees since IRCA became law, are rated "apparently compliant."

  — Firms whose I-9 records are not accessible for inspection are rated "compliance undetermined."

  — Firms whose verification records are incomplete or missing—and therefore fail to fully satisfy IRCA's verification requirements—are rated "apparently noncompliant."[26]

- **FLSA Violations**: The Fair Labor Standards Act is more complex than IRCA and FLSA violations are thus more difficult to identify.[27] In the situations where FLSA applies, workers must be paid at least the Federal minimum wage and, in most instances, one-and-one-half

[25] There are two types of coverage, enterprise and individual. All employees of covered enterprises are themselves covered. However, "employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce" (DOL, 1987:3). See Appendix to Chapter 5 for a discussion of FLSA coverage.

[26] his survey does not discriminate between degree of violation. Many violations may be minor or insignificant.

[27] Many firms rated FLSA compliant achieve this status passively, by falling outside the bounds of FLSA coverage. Investigations in such firms generate an FLSA-compliant rating. Treating such not-at-risk-of-violation firms as compliant, rather than outside the universe of applicability, reduces the violation ratio. This is particularly true in the services and retail trade, where FLSA coverage is far from universal.

times their usual hourly rate for time worked in excess of 40 hours per week. However, a sizeable number of U.S. workers are not covered by the FLSA.

— Table 2.1 illustrates that 9.9 percent of all wage and salary workers are not subject to minimum wage provisions and 14.7 percent are excluded from overtime protection (DOL, 1990).

Therefore, it is not sufficient to examine workers' wages to determine if their rights have been violated. It must first be established that they are entitled to FLSA protection.

— Coverage under the FLSA varies markedly among industries, among firms, and—within certain firms—among workers. Employers are required to pay the Federal minimum wage only to workers who are subject to this provision.

— If the firm does not satisfy the FLSA "dollars test,"[28] its employees receive minimum wage protection only during workweeks in which they engage in interstate commerce, the production of goods for commerce, or any activity which is closely related or directly essential to the production of such goods.

— Firms may be allowed to pay certain employees (particularly professionals and managers) a straight salary, regardless of total hours, while being required to pay others (particularly production workers) time-and-one-half for overtime. Often, employees themselves are not aware of the provisions governing their own jobs.

Violation Ratios

As noted earlier, the term "compliance" in some cases denotes passive "nonviolation." It does not necessarily mean that the firm has taken active steps to meet certain standards. Hence, it is impossible to distinguish between firms that are compliant as a result of efforts taken and those so classified because they fall outside the purview of the law. Wage and Hour Division compliance ratings therefore focus the discussion on active violators.

- The term "FLSA violation ratio" is used to denote the share of ESA/WHD inspections which revealed evidence of minimum wage, overtime, and/or child labor violations.

- The "IRCA violation ratio" indicates the share of employers who were found to maintain inadequate verification records. In neither case are all investigated firms at risk of violation.

[28] The FLSA "dollars test" for enterprise coverage is annual gross sales or business of at least $500,000.

STEP Firms

Every ESA/WHD inspection is potentially a STEP (or Special Targeted Enforcement Program) investigation (see *supra*, fn.). Local ESA/WHD officials assign the "STEP" designation to all firms they believe relatively more likely to employ illegal aliens, using guidelines from the national and district offices and information from local ESA/WHD and INS investigations.[29] Often, entire neighborhoods and/or local industries are given the STEP designation. If a firm subject to Wage and Hour investigation meets these STEP criteria, its case record is automatically assigned the STEP code.[30]

- About half (51 percent) of the ESA/WHD-inspected firms on which this study is based carry the STEP designation.

Correlates of Labor Law Violation

A firm's willingness and ability to comply with government regulations is likely to vary with many factors. Among these are the following:

- Understanding the legal requirements and/or having the benefit of legal counsel;
- Perception of the costs of compliance vs. those of noncompliance (including administrative burden);
- Perception of the risks of detection;
- Perception of the costs of detection;
- Risk aversion;
- Management ethics (including policy with regard to hiring unauthorized workers);
- Firm size;
  - — number of workers employed, and
  - — degree to which personnel procedures have been formalized;
- Firm location;
  - — looseness/tightness of the local labor market,
  - — prevalence of unauthorized workers in the local labor market,
  - — local availability of counterfeit documents, and
  - — actual INS and ESA/WHD enforcement presence;

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[29] Even though findings are not systematically linked by the national offices, they are often shared and discussed by INS and ESA officers in the field.

[30] Assigning this code prior to an investigation means that many STEP firms do not (and some NonSTEP firms do) actually employ unauthorized workers.

- Industrial affiliation of the firm;
  - — applicability of FLSA provisions,
  - — level of enforcement effort within the industry,
  - — unionization,
  - — strength of immigrant networks,
  - — strength of product demand,
  - — competitiveness,
  - — skill content of jobs being filled,
  - — character of the production process,
  - — prevailing wages,
  - — labor turnover, and
  - — working conditions.

ESA/WHD Records as a Source of Information

A number of these factors are readily observed in ESA/WHD's administrative records. Others must be inferred from local labor market information. Observable factors in ESA/WHD administrative records include firm size and location, industrial affiliation, and whether a firm's activity is in a sector of the local labor market suspected of employing unauthorized workers.

Firm size. Firms are identified as falling within one of seven size categories, but their actual number of employees is not recorded. Information on the extent to which personnel procedures have been formalized within the firm can be inferred from firm size.

Location. The firm's mailing address appears on its record. However, information on the strength of the local economy, prevalence of unauthorized workers in the local labor market, local availability of counterfeit documents, and the intensity of ESA and INS enforcement in that location must all be obtained from other data sources.

Industry. The firm's 4-digit Standard Industrial Classification code also appears on the ESA/WHD case record. Information reflecting how intensively the industry is monitored by Federal officials, the extent of unionization, the strength of immigrant presence within this industry, the strength of product demand, competitiveness, the skill content of jobs filled, the production process, prevailing wages, labor turnover, and working conditions can be inferred from other sources.

Firm involvement in a local labor market sector believed likely to employ unauthorized workers. Although the STEP designation reflects the local District Office management's or investigator's assessment of the firms more likely to hire unauthorized workers, it is not based on definitive evidence that such workers have been employed.

Many of the following factors driving compliance decisions also remain unobserved:

Understanding of the law. The establishment of organized personnel structures and access to legal counsel both facilitate learning about and complying more readily with IRCA and FLSA requirements. The ESA/WHD administrative records contain no direct information on these attributes. These must be inferred from firm size.

Perceived costs of compliance. The administrative records of ESA/WHD do not reveal the employer's perceived costs of compliance. However, one can speculate about these perceptions on the basis of real costs which affect perceptions and are more readily observed.

The most obvious cost of compliance with IRCA is a potential contraction of labor supply. The effect of such a contraction would be felt most strongly in labor markets where unauthorized aliens have been a prominent source of labor. Restricting the legally available labor supply within a given labor market would be likely to exert upward pressure on local firms' wage costs. Firms that have historically relied on unauthorized workers are also likely to experience increased recruitment and other personnel management costs.

The cost implications of FLSA compliance are even more direct. Minimum wage and overtime statutes set a floor on allowable wage offerings for most firms. The child labor statute constrains the labor supply options of, among others, small family-owned businesses—a sector of known foreign worker concentration. Thus, compliance with IRCA and FLSA statutes will tend to constrain a firm's potential profits.[31]

Perceived risks of detection. The administrative records of ESA/WHD provide no direct information on a firm's perceived risks of detection.[32] Firms may perceive the likelihood of IRCA violations being detected to be greatest where aliens are concentrated, as a result of higher-profile enforcement activities (Fix and Hill, 1990:128).[33] Yet, for the average U.S. firm, actual risks are relatively small. Less than one percent of the nation's businesses are investigated by ESA/WHD each year. Nonetheless, employers attempting to circumvent the law face a much greater risk of being investigated. This is due to two reasons:

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[31] During the 1980s, market forces established a wage floor for most activities that was above the legal minimum. Thus, for most enterprises, the minimum wage provisions of the FLSA did not seriously constrain wage offerings.

[32] IRCA I-9 records are reviewed by ESA only as part of a larger FLSA (or other statute-related) inspection. Hence, the risks of ESA inspection under these two laws are virtually identical.

[33] The relative deterrent effects of high visibility campaigns, widespread citations, and substantial penalties are all of considerable policy interest to those concerned with improving enforcement (President's Report 1991; Gray and Scholz, 1989; Hill and Pearce, 1990).

a. Sectors in which violations are most frequent are given higher priority by enforcement officials; and

b. Between 60 and 70 percent of all ESA/WHD investigations are initiated by dissatisfied employees.

Perceived costs of detection. Here, too, perceptions may be more relevant than actual costs; however only the latter can be identified.

Based on research by the Urban Institute and the Rand Corporation in the fall of 1988 and summer of 1989, the average fines levied against firms with inadequate IRCA verification records were modest, and few of these were collected in full. At that time, the INS had been purposefully lenient toward first-time violators. Often raids or fines came only after employers were given notice of I-9 deficiencies and had been given the opportunity to resolve them (Fix and Hill, 1990:101).

Assessed fines are frequently appealed. During the first three quarters of FY 1989, the last period for which such data are presently available, firms found guilty of employing unauthorized workers paid an average of $1,994 (DOJ, 1989). The penalties levied fell most heavily on smaller firms (Fix and Hill, 1990:85). This led some to argue that employer sanctions function as "a tax of the use of illegal labor by employers targeted for inspection by the authorities" (Hill and Pearce, 1990:29).

Nor are the statutory penalties for wage and hour offenses necessarily severe. It has been argued that the penalty structure within the Fair Labor Standards Act actually encourages many firms to ignore the statute (MWSC, 1981: 118). Although the FLSA does authorize punitive damages for child labor violations,[34] it rarely authorizes similar sanctions for minimum wage or overtime violations.[35] In the majority of such cases, the act limits wage and hour penalties to recovery of up to two years' backwages—wages the complainants would have received much earlier had the firm complied with the statute. By thus "gambling" on not being discovered, the employer gains up to two years' interest-free use of this money.[36]

The cost of pursuing small claims is also an impediment to recovery. Cases involving small infractions that are judged "unsuitable for litigation" are sometimes closed without recovery. Thus, from a profit-maximizing standpoint, and ethical considerations aside, the costs of sanctions may often be less burdensome than those of outright FLSA compliance.

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[34] These do not necessarily involve underpayment of youth, but rather inappropriate types or hours of employment.

[35] If ESA/WHD can prove that the firm is a willful or recurrent violator, the 1989 FLSA Amendments permit use of punitive damages (up to $1,000 per violation) and/or a 3 year recovery period for wage and hour violations. However, this aspect of the law has not yet been implemented.

[36] Efforts are underway to allow the Federal Government to collect backwages with interest.

Risk aversion and ethical code. Finally, a firm's tolerance of risk and its ethical code are also unobserved. Certain employers disregard regulations more freely than others. For the risk-averse, one of the clearest "benefits" of compliance is the assurance that the firm will not be vulnerable to penalties.

Many of these factors indirectly signal the presence of illegal workers. Other interrelationships may also be present. For instance, location and industry usually stand as a proxy for local economic conditions. They may also correlate with the likelihood that the firm will be presented counterfeit documents and/or will be visited by Federal enforcement officials. While both of these factors could improve the **completeness** of a firm's verification records, the mechanism for increasing compliance would differ. False documents enable the firm to circumvent the law without being detected, while enforcement activities promote its active compliance. Since these factors affect the degree to which IRCA is accomplishing its underlying goals, systematic analysis of these data requires that the relative importance of such underlying factors be explored.

Data Limitations

It is important to note several data limitations. First, because the firms we are considering were singled out as probable violators, either because one of their employees registered a complaint or because the sector in question was targeted for monitoring,[37] the ESA/WHD enforcement data are not statistically representative of the entire U.S. business community and thus cannot provide a basis for national compliance estimates. Because of the selection process involved in these investigations, ESA/WHD finds a high level of FLSA and IRCA violations. As Figure 2.1 illustrates, investigators found at least one apparent violation of IRCA or FLSA in 85 percent of the nonagricultural firms investigated, one or more apparent FLSA violations[38] in two-thirds of the firms, and apparent violations of IRCA's verification requirement in 61 percent of the firms.[39] Fully 43 percent were found to have violated both statutes. Although violation ratios are extraordinarily high within this group of firms, the detected violations represent only a small fraction of those occurring nationwide each year.[40]

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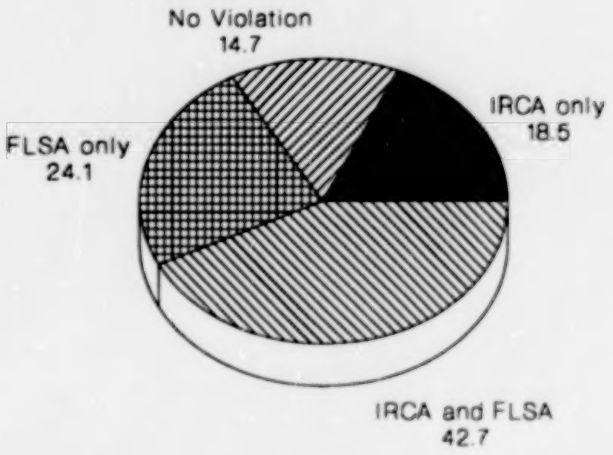
[37] The last nationally representative study of FLSA compliance was done for the Minimum Wage Study Commission. It found that in 1979, 13 percent of the nation's firms were violating minimum wage and/or overtime provisions (MWSC, 1981:83). Among firms being considered here, the comparable figure is 67 percent.

[38] Sixty percent had violated overtime regulations, 15 percent the minimum wage and 6 percent the child labor statute; some had committed multiple offenses.

[39] Seventy percent of the IRCA violators (as compared with 62 percent of other ESA/WHD-inspected firms) were also found to be committing FLSA offenses. Sixty-four percent of the FLSA violators (as compared with 57 percent of other firms) were also identified for apparent IRCA paperwork irregularities.

[40] The Minimum Wage Study Commission (MWSW, 1981) estimated that in 1979, only about one-fifth of total U.S. violations had been investigated by ESA. It is unlikely that this ratio has improved.

Figure 2.1 – Incidence of Apparent IRCA and FLSA Violations Among ESA/WHD-Inspected Firms



Second, the noncompliant behavior of certain sectors where unauthorized workers are prevalent may be under-represented. The ESA/WHD investigators must use payroll records and/or employee statements to verify charges that FLSA violations have occurred. When records are nonexistent and workers are unwilling to talk, as sometimes occurs in certain "sweatshop" situations where unauthorized workers are often employed, it becomes difficult to establish the existence of violations.

Third, taken by themselves, the ESA/WHD case records cannot completely describe the labor practices of the firms sanctioned under IRCA. Only a small fraction of ESA referrals lead to sanctions, while the INS also levies fines against many firms never visited by ESA.

To analyze fully the labor market behavior of the universe of IRCA-sanctioned firms would require a linkage of INS and ESA/WHD case records.

Tentative Findings from ESA/WHD Administrative Records

Despite these limitations, the data do provide the following tentative insights into the compliance behavior of inspected firms.

STEP versus NonSTEP firms

Field researchers have indicated that many firms continue to hire—and even recruit—unauthorized workers despite IRCA's threat of sanctions (Cornelius, 1988, 1990; Bach and Brill, 1991). Apparently, these employers still perceive that the benefits of this practice outweigh the costs of possible detection and sanctioning.

Table 2.2 – Total Investigations and Apparent Violations, by Act and Percentage in Violation, by STEP Status

STEP Status	Total Firms	Investigating Firms Found Violating:					
		Both IRCA and FLSA	IRCA	FLSA			
				Total	Minimum Wage	Over-time	Child Labor
Total	60,256	25,723	36,873	40,232	8,760	36,199	3,804
		Percentage of Investigated Firms in Violation					
Total	60,256	42.7	61.2	66.8	14.5	60.1	6.3
STEP	30,577	46.1	64.0	69.2	16.6	61.5	7.6
NonSTEP.....	29,679	39.2	58.3	64.3	12.4	58.6	5.0

Note: Chi-square tests indicate that for each type of violation the probability of the differentials between STEP and NonSTEP firms occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

One of the central questions of the present analysis is whether wage and hour statutes are violated more frequently in labor markets where unauthorized workers congregate. The STEP/NonSTEP classification provides some preliminary, if indirect, evidence on this topic. As noted earlier, the STEP designation indicates that local ESA/WHD officials thought that unauthorized workers might be more likely to be employed in a firm so-designated. This designation is usually assigned before the investigator's first on-site visit. It does not reflect hard evidence gathered within the particular firm, but rather probabilities based on observations elsewhere in the local labor market.[41]

Nonetheless, this classification scheme does appear to have merit. The compliance record of suspect STEP firms is observably, **and in many respects significantly,**[42] different from that of NonSTEP firms.

Some observers argue that many employers circumvent the new law by simply accepting and recording counterfeit documents (Bach and Brill, 1991; Cornelius, 1988). The STEP data reveal that, notwithstanding the apparent prevalence of this practice, satisfaction of IRCA requirements is less frequent in firms suspected of hiring unauthorized workers (Table 2.2). Among nonagricultural investigations, more STEP than NonSTEP firms have been identified for apparent failure to maintain complete records of employee work authorization (64 as compared with 58 percent). More have also been identified for apparent FLSA infractions (69 as compared with

[41] Non-STEP designations are sometimes corrected following an on-site ESA inspection if the investigator suspects unauthorized employment. However, only a match of ESA and INS case records could definitively establish whether such workers were in fact employed, and, if so, whether they had obtained their jobs since IRCA's enactment.

[42] Throughout this chapter, relationships among variables have been tested using the Chi-square statistic. Unless otherwise noted, those reported are statistically significant at the .01 level.

64 percent), as well as for simultaneous violations of both laws (46 percent as compared with 39 percent).

Size of Firm

Small firms tend to have a higher incidence of labor law violations than larger ones. Occupational Safety and Health Administration (OSHA) data reveal the greatest incidence and severity of health and safety violations in firms with less than 20 employees (DOL, 1980a:43). Likewise, the Minimum Wage Study Commission's 1979 national survey of 15,500 firms reported that the rate of overtime violations was greatest in businesses employing 1 to 9 employees; minimum wage infractions were most frequent in firms with 10 to 19 workers (MWSC, 1981:83).

There are several reasons for this tendency. Larger firms tend to be in a better position than smaller firms to comply with Federal laws. In the absence of legal counsel, even the well-intentioned small businessman might have difficulty complying with complex labor regulations. Firms with fewer resources, such as newly-established small businesses, may be even more likely to disregard statutes if they perceive them to threaten their survival.

The budget constraints of enforcement agencies may actually reinforce this tendency. Even though nearly 84 percent of the ESA/WHD investigations considered here occurred in firms with less than 100 employees, the smallest firms are underrepresented. When resources are limited, investigators must give higher priority to cases involving larger numbers of workers. Furthermore, it is also necessary to weigh backwages sought against the likelihood and cost of recovery. Many of the smaller violations thus are settled (or "conciliated") by telephone. In such instances, although the complainant's problem is usually resolved, other violations in the firm may be missed;[43] and some of the smallest claims are simply dropped. This establishes a strong relationship between firm size and the actual risk and cost of detection.

The selection of case records for this study partially obscures the link between firm size and FLSA violations. As noted earlier, telephone conciliations of minor FLSA violations eliminate the need for an on-site visit, and thus any opportunity to assess IRCA compliance. Lacking an IRCA compliance rating, these FLSA-violators must be omitted from our analysis. Because a disproportionate share of all conciliations probably occur in small firms, this may systematically limit our observations of both FLSA and IRCA violations in the smallest establishments.

The residual definition of compliance also operates to lessen FLSA violation ratios in smaller firms. Employees of firms that conducted less than $500,000 business during the previous year are sometimes ineligible for

[43] However, these firms are likely to be revisited at some future date to ensure that they have come into compliance.

Table 2.3 – IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation by Number of Employees

Number of Employees	Total Firms	Percentage of Investigated Firms Found Violating					
		Both IRCA and FLSA	IRCA	FLSA			
				Total	Minimum Wage	Over-time	Child Labor
Total	60,252	42.7	61.2	66.8	14.5	60.1	6.3
1-9	23,717	43.9	68.4	61.0	13.2	56.6	3.0
10-49	26,514	45.4	61.6	70.5	15.8	62.7	8.3
50-99	4,936	38.6	50.0	72.8	16.9	62.6	9.7
100-499 ...	4,032	28.2	37.7	69.7	12.4	60.5	8.6
500+	1,053	23.1	32.2	64.3	10.7	57.9	6.2

Note: Chi-square tests indicate that for each type of violation the probability of the differentials between various size groupings of firms occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations, opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

FLSA protection. As a result, their employers are technically compliant. Including them in the overall FLSA violation ratio depresses its value, particularly for smaller firms. As a result of these mutually supportive conventions, in this set of records, the incidence of FLSA violations appears to peak in firms with 50 to 99 employees.

Even so, during the first 27 months of IRCA enforcement, ESA/WHD investigators did find significantly more IRCA verification violations in smaller firms. Two-thirds of the investigated firms with less than 10 employees, as compared with less than one-third of those with 500 or more, were found to have IRCA violations (Table 2.3). This was true despite the fact that the largest firms probably hired, and therefore had to examine the work-authorizing documents of a much larger number of employees.[44]

Location

Some of the most important correlates of employer compliance—such as the prevalence of unauthorized aliens in the applicant pool, the level of the Federal enforcement, media attention to compliance issues, and employer sensitivity to IRCA's requirements—vary by location. The degree of aggregation with which location is specified (e.g.,"high-" vs. "low-alien" State clusters, specific States or specific metropolitan areas) is likely to affect the extent to which location serves as a proxy for these other factors.[45]

Data from the 1980 census and the INS Legalization Application Processing System (LAPS) confirm that the unauthorized workforce is highly concen-

[44] The greater regularity with which they did so could have increased their familiarity with the process, actually enhancing their ability to comply.

[45] See the discussion in President's Report (1991:Chapter 9).

trated in five key States.[46] Within these high-alien States, unauthorized workers are further concentrated in a few key metropolitan areas. North (1990) has identified 19 such areas (all in California, Texas or Illinois) in which he estimates that at least 3 percent of the area's 1987 population sought legalization under IRCA.[47] Given the role of immigrant networks in the immigration process (DOL, 1989: Chapter 2), the same communities are probably still centers of unauthorized immigration.

In examining ESA/WHD administrative records, both State and metropolitan area concepts have been used to juxtapose the behavior of firms in high- and low-alien areas. Although firms in high-alien areas might be expected to respond to IRCA differently from firms located elsewhere, it is not entirely clear how their response would differ.

On the one hand, the risk of encountering and hiring unauthorized applicants is greatest where aliens are most numerous. If a substantial share of employers in those areas opted to ignore the employment eligibility verification requirements, the resulting rate of IRCA violations might be very high.

On the other hand, the highly visible Federal enforcement efforts in those communities, coupled with the ease of access to counterfeit documents, might encourage employers to keep detailed and complete employment eligibility verification records. Being sensitized to the law could thus markedly reduce IRCA violations.

The ESA/WHD investigations uncover evidence of both responses: where unauthorized workers are most concentrated, there are disproportionately fewer findings of apparent IRCA violations—but their incidence is highest in firms thought likely to hire unauthorized workers. During the first 27 months of enforcement, in the 45 low-alien States, 63 percent of investigated firms were notified of apparent IRCA violations, compared with 58 percent in the 5 high-alien States.[48] Within these 5 high-alien States, firms outside the 19 cities of greatest alien concentration registered a 60 percent IRCA violation ratio; those in the 19 key communities registered just 50 percent (Table 2.4). Yet, in each of these locations, proportionately more STEP than NonSTEP firms received notices of apparent violations. (Table 2.5).

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[46] Our definition of "high-alien States" corresponds with that used by the GAO: California, Texas, New York, Illinois and Florida. All other States are designated "low-alien States". For a discussion of these designations (see GAO, 1989; GAO, 1990; and President's Report, 1991).

[47] These communities include (in descending order by proportion of their population that sought legalization): Visalia, CA; Los Angeles/Long Beach, CA; Fresno, CA; Salinas, CA; McAllen/Edinburgh/Mission, TX; Anaheim/Santa Anna, CA; Bakersfield, CA; Brownsville/Arlington, TX; El Paso, TX; Riverside/San Bernardino, CA; Oxnard/Ventura, CA; Stockton, CA; Modesto, CA; San Diego, CA; Santa Cruz, CA; Houston, TX; Aurora/Elgin, IL; Dallas, TX; and San Jose, CA.

[48] Data from the GAO National Employer Surveys of 1988 and 1989 indicate that—net of other factors—the high- vs. low-alien State differential may be statistically insignificant. This remains to be tested more systematically with the ESA database.

Table 2.4 – IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation, by Location of Firm

Number of Employees	Total Firms	Percentage of Investigated Firms Found Violating					
		Both IRCA and FLSA	IRCA	FLSA			
				Total	Minimum Wage	Over-time	Child Labor
Total	60,256	42.7	61.2	66.8	14.5	60.1	6.3
Low-alien States ...	40,901	44.6	62.8	68.4	15.3	61.6	6.4
High-alien States ..	19,355	38.6	57.8	63.4	13.0	56.8	6.0
Key metropolitan areas	4,367	39.8	50.3	74.3	14.2	66.7	6.8
Other regions, high-alien States	14,988	38.2	60.0	60.2	12.7	53.9	5.8

Note: Chi-square tests indicate that for each type of violation the probability of the differentials between various size groupings of firms occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations, opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

These locational variations do not enable us to distinguish between the effects of enforcement (i.e., geographic differentials in understanding of, and compliance with, the law) and those of schemes to evade IRCA (e.g., the acceptance of counterfeit documents). If enforcement was the main factor driving IRCA compliance, ESA/WHD's simultaneous enforcement of the FLSA might be expected to have similar geographic consequences with respect to FLSA violations.

Investigation data confirm that, during the same period, there have been fewer identifications of apparent FLSA violations in high- than in low-alien States: 63 percent as compared with 68 percent (Table 2.4). However, in

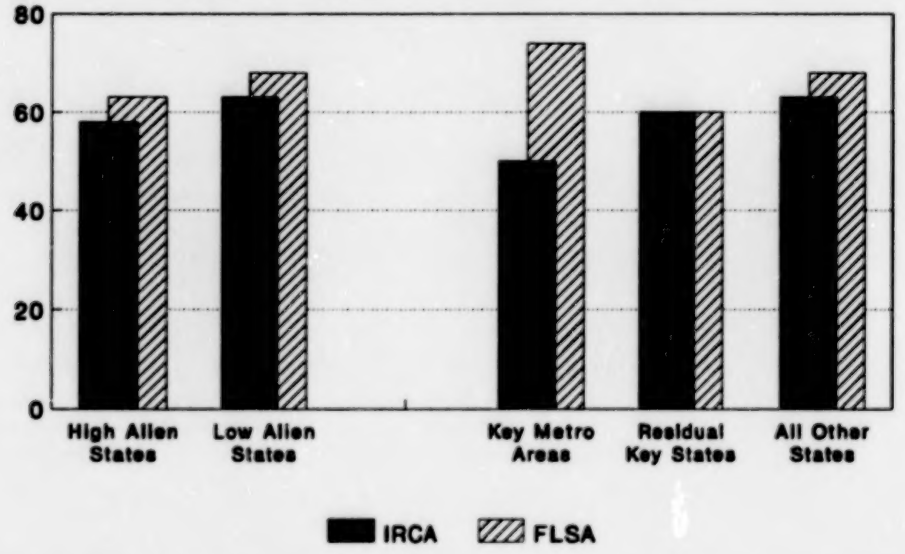
Table 2.5 – Percentage of Firms Apparently in Violation of FLSA and IRCA, by Location and STEP Status

Location of Firms	Percentage of Investigated Firms Found Violating:			
	IRCA		FLSA	
	STEP	NonSTEP	STEP	NonSTEP
Total	64.0[1]	58.3[1]	69.2[1]	64.3[1]
Low-alien States	66.4[1]	59.7[1]	72.4[1]	64.9[1]
High-alien States	60.2[1]	54.2[1]	64.1	62.3
Key metropolitan areas	51.5	47.4	74.0	74.9
Other regions, high-alien States	63.2[1]	55.6[1]	60.6	59.4

[1] Chi-square tests indicate that for each type of violation the probability of the differentials between firms in various localities occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

Figure 2.2 – IRCA and FLSA Violations by Locality



the 19 high-alien communities where firms appeared most compliant with IRCA, FLSA violations peaked (Figure 2.2).[49]

This raises the question of why firms in the highest-alien communities appear to be so much more sensitive and responsive to IRCA than to FLSA regulations. Their counterparts elsewhere in the five high-alien States actually registered the lowest of the three FLSA violation ratios shown: 60 percent. The compliance differential among communities within the high-alien States is particularly curious and may warrant further study.

Industry

Just as geographic aggregation affects our understanding of locational variations in compliance, industrial aggregation affects the extent to which compliance behavior appears linked to industrial affiliation.

High- vs. low-alien industries. The GAO's 1989 study of employer compliance with IRCA contrasted the behavior of firms in high- and low-alien industries (GAO, 1989). The GAO identified five nonagricultural industries that routinely employ illegal aliens: a) construction; b) the manufacture of food and kindred products; c) the manufacture of apparel and textiles; d) retail eating and drinking establishments; and e) services concerned with hotels and other lodging. Here we employ the same definition of high-alien industry, further controlling for local patterns of unauthorized employment by means of the STEP classification.

[49] In these areas, the FLSA compliance ratios of STEP and NonSTEP firms differed little from one another (Table 2.5).

Table 2.6 – IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation by Industry Group and STEP Status

Industry Group and STEP Status	Total Firms	Percentage of Investigated Firms Found Violating					
		Both IRCA and FLSA	IRCA	FLSA			
				Total	Minimum Wage	Over-time	Child Labor
Low-Alien	40,923	39.2[1]	57.9[1]	65.9[1]	13.7[1]	60.3	4.5[1]
STEP	16,505	43.1[2]	60.0[2]	68.5[2]	16.0[2]	62.3[2]	4.9
NonSTEP	24,418	37.9[2]	56.6[2]	64.2[2]	12.2[2]	58.9[2]	4.3
High-Alien	19,330	46.1[1]	68.1[1]	68.6[1]	16.3[1]	59.6	10.1[1]
STEP	14,071	49.5[2]	68.8[2]	70.0[2]	17.3[2]	60.6[2]	10.7[2]
NonSTEP	5,259	45.5[2]	66.4[2]	64.8[2]	13.5[2]	57.1[2]	8.4[2]

[1] Chi-square tests indicate that the differentials between high- and low-alien industries occuring randomly in less than 0.01, execpt with regard to overtime.

[2] For all types of violations within each industry grouping, differentials by STEP classification were statistically significant at the 0.01 level.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

In 1989, 15 percent of all civilian nonagricultural wage and salary workers in the United States held jobs in the five industries of the high-alien cluster.[50]

However, this industrial cluster accounts for 36 percent of the ESA/WHD investigations.

Significantly more of the investigated firms in the high-alien industrial cluster have been found to have faulty IRCA verification records than has been the case elsewhere: 68 percent as compared with 58 percent in other industries (Table 2.6). The margin by which FLSA violation ratios differed was much smaller: 69 percent as compared with 66 percent in other industries.

As expected, across the board, more STEP than NonSTEP firms were found to be in violation of each law. Both minimum wage and child labor violations were found to be most pervasive in high-alien industries, and particularly in STEP firms within that sector. Identification of apparent child labor violations were twice as frequent in high- as in low-alien industries (Table 2.6), and one-and-one-half times as common in STEP as in NonSTEP establishments (Table 2.2). Although there was virtually no difference in the frequency of apparent overtime violations by industrial cluster, within each cluster significantly more STEP than NonSTEP firms received such notifications (Table 2.6).

[50] Current Population Survey, annual average, 1989.

Table 2.7 – IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation by Major Nonagricultural Industry

Major Industry	Total Firms	Percentage of Investigated Firms Found Violating: IRCA and FLSA	IRCA	FLSA Total	FLSA Minimum Wage	FLSA Over-time	FLSA Child Labor
Total	60,256	42.7	61.2	66.8	14.5	60.1	6.3
Mining	378	50.5	63.5	76.5	13.0	74.3	0.8
Construction	8,662	54.7	71.5	73.8	8.3	71.1	3.0
Manufacturing							
Durable	3,367	33.6	55.5	55.4	7.2	52.8	4.4
NonDurable	2,710	31.5	57.3	51.1	9.5	47.3	4.5
Food	491	37.5	54.8	65.4	9.4	61.3	8.1
Apparel	757	32.2	65.9	44.4	15.6	39.5	3.0
Transportation and Public Utilities	2,131	43.3	59.3	70.3	16.1	64.9	1.9
Trade							
Wholesale	2,999	38.5	56.6	62.9	10.2	58.3	4.8
Retail	20,121	43.7	64.6	65.0	19.6	53.1	12.3
Eating Places	8,005	44.9	67.0	65.5	24.6	48.2	19.6
Finance, Insurance, Real Estate	1,934	40.3	50.9	74.5	11.2	72.0	1.7
Services Total	15,291	41.3	58.4	68.3	15.2	63.5	3.1
Hotels, Lodging	1,324	42.9	59.7	69.7	20.2	66.2	4.1
Personal Services	2,300	40.7	67.0	58.4	16.8	53.1	3.0
Private Household	43	67.4	79.1	81.4	62.8	34.9	2.3
Forestry, Fishing	48	25.3	64.6	43.8	8.3	39.6	6.3
Public Administration	2,346	32.0	41.8	75.8	14.5	69.3	3.8

Note: Chi-square tests indicate that for each type of violation the probability of the differentials between major industry occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

Specific industries. It is not surprising that GAO's industrial dichotomy indicates only a modest link between industrial affiliation and compliance behavior. Although many firms in high-alien industries may share a predisposition to hire unauthorized workers, in other important respects they are probably much more heterogeneous. The share of their workforce subject to FLSA regulation, the intensity of exposure to Federal monitoring activities, the skill content of occupations involved, the nature of the production process, rates of worker turnover, and the strength of product markets all affect the degree to which firms have internalized the constraints of Federal regulation.

Thus, as Table 2.7 shows, the violation ratios of the five industries singled out by GAO not only differ markedly from one another but exhibit no consistent pattern. For instance, 72 percent of construction investigations, as compared with 55 percent of food industry investigations, found evidence of IRCA violations. By the same token, FLSA violation ratios range from 74 percent in construction to just 44 percent in apparel manufacturing. The GAO industrial clusters therefore mask tremendous variability along the industrial dimension.

Table 2.8 – IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation by STEP Status and Selected Nonagricultural Industry

Industry	Total Firms Investigations		Percentage of Investigated Firms Found Violating:			
			IRCA		FLSA	
	STEP	Non STEP	STEP	Non STEP	STEP	Non STEP
Total	30,577	29,679	64.0	58.3	69.2	64.3
Mining	139	239	62.6	64.0	74.1	77.8
Construction	5,883	2,779	71.7	71.1	76.8[1]	67.4[1]
Manufacturing						
Durable	1,226	2,141	57.3	54.5	61.5[1]	51.8[1]
NonDurable	1,273	1,437	59.3	55.5	50.9	51.4
Food	233	258	56.7	53.1	65.2	65.5
Apparel	482	275	67.2	63.6	45.0	43.3
Transportation, Public Utilities	795	1,336	56.5	60.9	72.2	69.2
Trade						
Wholesale	1,284	1,715	56.4	56.8	62.4	63.3
Retail	12,029	8,092	66.7[1]	61.6[1]	67.5[1]	61.3[1]
Eating Places	6,536	1,469	68.1[1]	62.4[1]	65.7	64.5
Finance, Insurance, Real Estate	734	1,200	54.5	48.7	78.8	71.8
Services Total	6,057	8,784	59.2	57.8	70.4[1]	66.8[1]
Hotels	883	441	59.6	59.9	72.7	63.7
Personal Services	1,274	1,026	65.1	69.4	58.3	58.4
Private Household	20	23	80.0	78.3	75.0	87.0
Forestry and Fishing	28	20	64.3	65.0	46.4	40.0
Public Administration	551	1,795	52.1[1]	38.7[1]	70.4[1]	77.4[1]

[1] Chi-square tests indicate that for each type of violation the probability of the differentials between STEP and NonSTEP firms occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations, opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

Interestingly, when specific industries are controlled for as in Table 2.8, STEP status appears less strongly linked to IRCA than to FLSA violations. Most STEP differentials in IRCA violation are statistically insignificant. Only in retail trade, especially eating and drinking establishments, and public administration, do STEP firms appear to maintain markedly inferior employment eligibility verification records. The STEP differential is more pronounced for FLSA violations particularly in construction, durable goods manufacturing, retail trade,[51] and total services. Yet, the rate of apparent FLSA violations among the apparel manufacturers and restaurants thought likely to employ unauthorized workers has been nearly identical to that of their NonSTEP counterparts. Investigators indicate that in these industries, workers' reluctance to talk, coupled with incomplete wage and hour records, render it particularly difficult to establish the occurrence of FLSA violations.

[51] Retail sales account for one-third of all child labor offenses. In this industry, 14 percent of the STEP firms, as compared with 9 percent of the NonSTEP firms, received citations.

Summary of Observations

This chapter has reviewed the findings of field investigations by the Department of Labor's Employment Standards Administration, Wage and Hour Division, for insights into IRCA and FLSA compliance behavior, and the link between compliance and unauthorized employment. The statistical analysis of the linkage between illegal hiring practices and violations of IRCA and FLSA is hindered by a number of data limitations. These include the following:

- Lack of information on the legal status of employees in firms where IRCA and FLSA violations are found.
- Inability to identify whether FLSA-compliant firms were subject to, and therefore at risk of violating, that law,
- Difficulties verifying FLSA infractions in sectors where unauthorized workers are reluctant to talk with authorities.

Nonetheless, our preliminary look at the existing ESA/WHD enforcement records allows the following observations:

- Among the firms whose verification records have been examined by the ESA Wage and Hour Division, about 3 out of 5 do not appear to be adequately recording new employees' work authorization documents.
- About 2 out of 3 of these same firms appear to have violated FLSA provisions.
- These types of violations often occur simultaneously in the same firm. Over 66 percent of the firms violating FLSA statutes also fail to record work authorization documents, while 70 percent of the IRCA-violators are also cited for FLSA infractions. Fully 43 percent of all ESA/WHD nonagricultural investigations uncovered evidence that the firm is violating both statutes.
- The link between FLSA compliance and location is complex, and its relationship to concentrations of unauthorized immigrants appears to be bimodal. Firms within the five high-alien States but outside the 19 key communities received proportionately fewer notices of apparent IRCA violations (60 percent) than either those in the highest-alien communities (74 percent) or in low-alien States (68 percent).
- The many factors for which location serves as a proxy—the strength of the local economy, the presence of unauthorized aliens and other foreign-born workers in the potential labor pool, the availability of counterfeit documents, and the intensity of Federal enforcement activities—need to be dealt with more explicitly.

- Firms in the GAO's high-alien industrial cluster are proportionately more likely to violate IRCA, minimum wage and child labor statutes than those in other industries. However, alien concentration is probably only one of many attributes driving this relationship, and probably not the main source of industrial variability.

- Although the operational definition of STEP firms varies by locality, within both high- and low-alien industries, STEP firms are significantly more likely than NonSTEP firms to receive both FLSA citations and notices of apparent IRCA violations.

- There is a positive relationship between the number of workers employed in a firm and its compliance with the IRCA statute: the smallest firms are most likely to be found noncompliant.

Appendix to Chapter 2: Workers Subject to the Fair Labor Standards Act

In general, if an enterprise has two or more employees engaged in commerce or the production of goods for commerce, or has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce, and its annual dollar volume of business is $500,000 or more, **all** its workers are covered by the Fair Labor Standards Act. (Some enterprises are covered irrespective of their annual dollar volumes of business, including hospitals, nursing homes, schools, institutions of higher education, and public agencies.) Firms below the statutory threshold may still have employees subject to the Act's minimum wage, overtime pay, record keeping, and child labor provisions if such workers are individually engaged in interstate commerce or in the production of goods for interstate commerce.

Special minimum wage rules apply in the following cases: 1) tipped employees; 2) persons receiving room and board and other facilities as part of their compensation; and 3) certain groups who might otherwise have difficulty obtaining employment (e.g., student learners and persons with impaired capacity through age, physical or mental deficiency or injury).

Several groups are exempt from both the minimum wage and overtime requirements. These include the following: 1) executive, administrative, and professional employees and outside sales persons; 2) employees of certain seasonal amusement or recreational establishments; 3) employees of certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations; 4) farm workers employed on a farm that used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year; and 5) casual babysitters and persons employed as companions of the elderly or infirm.

Additionally, the following are exempted from the overtime provisions only: 1) certain highly-paid commissioned sales employees of retail or service establishments; 2) auto, truck, trailer, farm implement, boat or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, and who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers; 3) employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans; 4) announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations; 5) domestic service workers residing on their employers' premises; 6) employees of motion picture theaters; and 7) farmworkers.

Finally, partial exemptions to overtime pay apply to the following cases: 1) employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors; and 2) hospitals and residential care establishments, which may adopt, by agreement with their employees, a 14-day work period in lieu of the usual 7-day workweek, if the

employees are paid at least time and one-half their regular rates for hours worked over 8 hours per day or 80 hours per 14-day time period, whichever is the greater number of overtime hours.

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CHAPTER 3: THE 1989 GAO SURVEY OF EMPLOYERS, LABOR FORCE STRATEGIES AND DISCRIMINATORY BEHAVIOR

This chapter reports the results of the Department of Labor's ongoing investigation of how employers are adapting their employment practices as a result of the employer sanctions provisions of IRCA. Following the analysis of GAO's first survey that appears in chapter 12 of the first President's report, this chapter analyzes GAO's second nationwide random sample of firms surveyed during the summer of 1989. The GAO used an anonymous mail-out survey where employers self-reported whether they engaged in any of several types of IRCA-related employment practices. Possible explanations for two general responses to the law are systematically evaluated in this chapter:

- **labor force strategies** pursued either to attract authorized workers or to avoid employing unauthorized workers; and
- **discriminatory hiring practices** (as defined by the GAO) against workers based on national-origin or citizenship status.

Timing and Interpretative Considerations

At the time of the 1989 GAO survey, employer sanctions had been in full force for less than a year. Although employers responded to the survey during the summer of 1989, many of the survey questions ask about behavior during 1988, before sanctions were fully implemented. During the early phases of implementation, the INS focused primarily on employer education and, in all but a few instances, it only cited (rather than fined) employers for noncompliance. The employer education period for nonagricultural employers ended on May 31, 1988;[52] that for agricultural employers on November 30, 1988. As a result, evolving enforcement strategies and additional education could lead to changes in the relationships and num-

bers discussed here.[53] Indeed, the Immigration Act of 1990 strengthened anti-discrimination and education programs.

Firm Characteristics and Employment Practices

The following two sections report on and discuss the results of a statistical analysis of employers' reports that either they have, or have not, changed their employment practices as a result of IRCA. In the survey, employers responded whether they had 1) increased outside contracting, 2) increased wages, 3) discriminated on the basis of national origin, or 4) discriminated on the basis of citizenship status. These responses are thought to be related to the firm's location, industry, the demography of its labor force, and the degree to which various elements of IRCA's implementation are incorporated into the firm's working environment.

Interpreting the GAO Survey

Employers can only answer "yes" or "no" to each of the four questions about their employment practices. Logistic regression is used to evaluate the relationship between various firm characteristics and employer responses (Maddala, 1983; Hanushek and Jackson, 1977). Because the "implementation" of IRCA consists of several provisions, any one of which might affect firms differently (see Fix and Hill, 1990:12-16), the simultaneous consideration of many characteristics in the same analysis strengthens our confidence that any one relationship is truly significant (Nagel and Neef, 1985:118).

For example, employers in location X may be more likely to respond that they have increased wages to attract authorized workers. However, there may be certain other characteristics shared by firms in that location that actually explain such a response. For instance, these firms might be smaller than average. Without simultaneously considering as many such characteristics as possible, the interpretation of any one relationship is uncertain. As a result, we wish to know whether the employers in location X are more likely to report increasing wages when compared to firms in other locations that are similar in size, labor force composition, exposure to IRCA implementation effects, and possess the same information. The analysis thus estimates the influence of location on the likelihood that the firm reports changing its practices holding other characteristics constant.[54] Several such relevant characteristics are discussed next.

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[52] The GAO survey discussed here was first mailed out in April 1989; the cut-off date for responses was September 1989 (GAO, 1990:27). Sanctions had been in full force for between 10 and 14 months prior to this survey.

[53] For a discussion of additional methodological issues, see GAO (1990); President's Report (1991); Papademetriou et al. (1990).

[54] See this chapter's technical appendix for such details as the survey questions, construction of the variables, descriptive statistics, the method of estimating the model, logistic coefficients, the statistical significance of individual coefficients, and the overall equation.

Firm Characteristics

Given the skewed geographic and industrial distribution of firms most likely to feel either the impact of IRCA enforcement or changes in the availability of authorized workers, it is important to consider both the location and the industry of particular firms (Greenwood and McDowell, 1990:59; Lowell, 1989:47). The GAO (1990:123) used the 1980 census to identify firms located in one of eight geographic locations, and one of two industries with high proportions of Hispanics and Asians. As in earlier chapters, these sites are referred to as key locations and key industries.

Several other firm characteristics are also important in analyzing employer responses to the risk of sanctions. Some analysts argue that small U.S. firms, because of their low visibility and large number of competitors, are more likely to employ casual labor and disregard labor laws (Portes and Sassen-Koob, 1987:42; Granovetter, 1984:332; North, 1990). As a result, smaller firms might be more likely both to be affected by changes in the supply of unauthorized labor and to engage in discriminatory hiring behavior.

Because each new employee hired must prove that he or she is authorized to work in the United States, firms with relatively greater proportions of their workforce hired during 1988 may be more likely to choose options that reduce their risk of hiring unauthorized workers. Finally, it is likely that IRCA has made firms with relatively large proportions of Hispanic or Asian ("foreign-appearing") workforces feel particularly vulnerable to potential sanctions. This feeling of vulnerability may lead these firms to be more likely to improve wages to attract legal workers; or it may lead them to increase the use of outside contractors and thus transfer the legal responsibility for employing unauthorized workers; or finally, it may lead them to attempt to screen out (discriminate against) possibly unauthorized job applicants on the basis of appearance.

Firms which have traditionally relied on unauthorized workers may feel the impact of both the changes in labor supply and the threat of sanctions more acutely than other firms (Crane et al., 1990:47; Cornelius, 1988:25). This subset of firms may hire the majority of unauthorized workers. Hence, if IRCA is to be successful, it is these firms that must respond to the law.[55] To capture this, the analysis includes a measure of whether the employer reported a practice of employing unauthorized workers, at least some of whom the employer reported hired before November 1986. We refer to such firms as routine employers of unauthorized workers.

[55] Their self-reported behavior should be more or less the same as that for employers with large Hispanic or Asian workforces. However, the proportion of these traditional employers of unauthorized workers reporting changed behavior should be greater.

IRCA Implementation Effects

The term "implementation" refers to the total set of educational, employment eligibility verification, investigatory, and sanctioning mechanisms that put the law into action (Fix and Hill, 1990; Bean et al., 1989:35). As such, the term also includes elements that we cannot directly measure in this analysis.[56]

The GAO (1988:52; 1990:73) has noted that education and improved understanding of the law appear to lessen discriminatory behavior and has called for increased educational outreach. The Administration's review of the 1990 GAO report (Task Force on IRCA-Related Discrimination, 1990) concurred with many of that Report's recommendations and the Immigration Act of 1990 (P.L. 101-649) mandated significant increases in the education effort.

Employers reported on their receipt of IRCA "information" from a variety of sources and how clear that information was on both documentation requirements and anti-discrimination. We expect firms receiving information about—and reporting a clear understanding of employer sanctions—to be less likely to report discriminatory hiring practices (GAO, 1988:51). These variables are included in the analysis of discriminatory behavior only because education efforts did not deal with other labor force strategies.

In addition, employers reported if they had been investigated for employing unauthorized workers or if they anticipated being visited by the INS.[57] We expect that employer visits will be associated with a greater likelihood of the firm pursuing labor force strategies that reduce the number of unauthorized employees. Finally, we expect firms reporting being in compliance with the employment eligibility verification (I-9 form) provisions of the law to feel less pressure to pursue alternative labor force strategies and, while uniformly verifying all new workers, to be less likely to discriminate (Kamasaki and Purtell, 1985:82).

Labor Force Strategies

As a result of IRCA's employer sanctions provision, employers may have changed their labor force strategies for two reasons: (1) the risk of sanctions and (2) despite an ongoing willingness to hire unauthorized workers, the

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[56] Broadly speaking, the implementation of IRCA includes the law's various legalization programs. In addition, IRCA authorized funding increases for the INS border patrol. However, to date there has been little increased funding/effort directed toward more stringent border control (Bach and Meissner, 1990).

[57] The GAO survey does not measure U.S. Department of Labor's (DOL) labor law or I-9 compliance inspections at the establishment level. Noting that the number of DOL inspections greatly exceeds those undertaken by the INS, the GAO (1988:34) and the Task Force on IRCA-Related Discrimination (1990:48) have suggested more DOL involvement in the enforcement of employer sanctions. See President's Report (1991:Chapter 9) for a discussion of the DOL's role in sanctions enforcement.

inability to find such workers. The risk of sanctions is measured by several of the characteristics just discussed. And although it may be more difficult to measure changes in the availability of unauthorized workers,[58] IRCA did reduce their numbers.[59]

The GAO's 1989 nationwide survey permits an assessment based upon a large number of employers in many sectors.[60] Two questions regarding changes in the labor force strategies of employers are analyzed below.

- **Increased Use of Contractors**: Employers were asked whether they had begun or increased their use of contractors for work previously done by employees. The GAO (1989) notes that small "sweatshops," which regularly undertake contract work for larger firms, frequently violate labor laws nationwide. Some observers believe IRCA might compound this problem by motivating employers to transfer the risk of sanctions to others (Kamazaki and Purtell, 1985:89; see also Waldinger and Lapp, 1991).

- **Increased Wages**: Employers were asked whether they had or had not increased wages "to attract authorized workers." Many policymakers had argued that this would occur as IRCA restricts the availability of unauthorized workers who may have worked for lower wages. It has also been argued that the law will make it necessary for U.S. employers to upgrade working conditions in order to maintain an authorized labor force (U.S. Congress. Senate Judiciary Committee, 1985; GAO, 1988:69; Lovell, 1981:21).

Discussion of Individual Relationships

Only nonagricultural employers reporting that they are "aware" of the law and employers who hired at least one employee during 1988 are included in the sample analyzed here.[61] First, we calculate the baseline likelihood for adopting a new strategy. This baseline represents the behavior of the

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[58] U.S. Census Bureau researchers estimate that at least 1.9 million aliens were still in undocumented status in 1988 (see Woodrow and Passel, 1990:64).

[59] As of the fall of 1988, the law's two legalization programs had reduced the pool of unauthorized aliens by 3.1 million persons (Hoefer, 1989). While the analysis undertaken here is restricted to nonagricultural firms, it is worthwhile to note that a substantial fraction (possibly as many as two-thirds) of the 1.3 million applicants for the agricultural legalization program are thought to have already moved into nonagricultural employment (Baker, 1990:138; North, 1988; Kissam and Intili, 1989; Teitelbaum, 1989).

[60] The GAO's (1988:70) first nationwide survey was taken at the same time as these early studies. About 6 percent of employers reported to GAO that they increased wages and outside contracting. In DOL's analysis of that survey, (President's Report, 1991:Chapter 12) those responses were found to be greatest among employers experiencing changes in the supply of unauthorized labor.

[61] This sample is selected because of two reasons: 1) only employers who are aware of the law can correctly answer that their strategy is "a result of your firm's understanding of the 1986 immigration law," per the GAO question; and 2) employers who have not hired in the past year are unlikely to have changed their behavior. Agricultural firms are excluded because of the complexities of that labor market.

typical U.S. firm.[62] Next, we calculate the percentage point change that results when certain firm characteristics—i.e., location, size, experience with implementation, etc.—are changed one at a time.[63]

Increased Use of Contractors For this sample, as well as for the variables included in the analysis, the baseline likelihood of a typical firm increasing its use of contractors is 2.9 percent. The first column of Table 3.1 shows the percentage point change associated with the variables used here to explain increased use of outside contractors. Compared to the typical or baseline firm, California firms (outside of L.A.) and Texas firms (outside of border cities) report a greater likelihood of contracting out than firms in other locations. For example, firms in the balance of California are 3.4 percentage points more likely and firms in Texas are 5.4 percentage points more likely to have turned to contracting out than other similar firms in the rest of the United States.[64]

Firms in key immigrant industries are less likely to report an **increased** use of contractors, perhaps because they already were more likely than other firms to use contractors (GAO, 1989; Cornelius, 1988:21)— although the change in likelihood is less than one percentage point (-0.7). In a similar fashion, the firm characteristics discussed next have a small association with contracting out.

In evaluating firm characteristics, only relatively large changes are considered, such as a change from levels characteristic of the average firm in this sample, to a level that is one standard deviation above the average.[65] For example, on average, 7.8 percent of a firm's workforce is Hispanic; at one deviation above the average the firm's workforce would be 25.1 percent Hispanic. A change of this magnitude in the proportion of workers who are Hispanic results in an increased likelihood of engaging in contracting of less than 1 percentage point. Similarly, changing the proportion of Asian workers in a firm by one standard deviation, from 2.3 percent Asian to 11.9 percent Asian, increases the likelihood of using contractors by only 0.3 percentage points. And increasing firm size by one standard deviation, from 36 to 107 employees, lessens the likelihood of the use of contractors by less than 1 percentage point.

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[62] See the footnote to Table 6.1 for the definition of the typical firm and all statistically significant probabilities. See the Technical Appendix following this chapter for a complete presentation of the logistic coefficients and a discussion of relevant issues.

[63] Note the difference between a percentage point change and a percent change. For example, if the baseline likelihood is 2.9 percent, a 10 **percentage point** change is calculated as 2.9 plus 10; this yields a new likelihood of 12.9 percent. A 10 **percent** change is calculated as 2.9 multiplied by 1.1 which yields a new likelihood of 3.19 percent.

[64] These "percentage point" changes could also be expressed as follows: the likelihood of firms increasing their use of outside contractors is 6.2 percent in the rest of California and 8.2 percent in Texas. It is preferable to discuss the percentage point **change** because it clearly represents the effects of each variable.

[65] These variables are measured on a continuous scale and we want to focus on large changes. See the appendix for the means and standard deviations for these variables.

Table 3.1 – Increased Use of Contractors and Increased Wages, by Firm Characteristics and IRCA Implementation: 1989 GAO Survey

	Increased Use of Contractors	Increased Wages to Attract Author. Workers
Baseline likelihood for the typical firm[1]	2.8	2.4
Percentage point change:[2]		
FIRM CHARACTERISTICS		
1. Los Angeles	–	–
2. Rest of California	3.4	–
3. Texas border cities	–	–1.5
4. Rest of Texas	5.4	–
5. New York City	–	2.2
6. Chicago	–	–
7. Miami	–	–1.6
8. Key immigrant industry	–0.7	–
9. % Employees Hispanic	0.6	0.7
10. % Employees Asian	0.3	0.4
11. Size (number of employees)	–0.4	–0.4
12. % Employees hired during 1988	–	–
13. Routine employer of unauthorized workers	3.2	9.5
IRCA IMPLEMENTATION		
Likelihood of sanctions		
14. Past INS worker investigation	2.9	–
15. Anticipated INS visit	–	–
I-9 Document Verification		
16. Not in compliance	–	–

[1] "Typical" firms are defined as follows: in a non-key location, non-key industry, reports no unauthorized workers, has neither been nor anticipates being investigated by the INS, and in compliance with I-9 provisions. Additionally, firm size, the percent of employees who are Hispanic or Asian, and the proportion of new hires are evaluated at the sample mean. These values were chosen because the majority of firms exhibit these characteristics; see Appendix Table A2.2.

[2] Results are statistically significant at the .05 level or better (— otherwise). See discussion in the text for a fuller explanation of percentage point changes.

Firms may be substituting contractors for employees for several reasons. This analysis can gauge a response to the declining availability of unauthorized workers, or an attempt to avoid legal culpability for the continued hiring of unauthorized workers. Firms reporting the routine employment of unauthorized workers are 3.2 percentage points more likely to have turned to outside contractors than firms that do not report unauthorized workers. Firms investigated by INS for illegal employment practices are also 2.9 percentage points more likely to use contractors than firms not investigated. Both findings suggest that IRCA-related events are significant explanations of an employer's decision to turn to outside contractors.[66]

[66] Changes in product demand or unpredictability of demand associated with international trade may explain longer-term changes in the use of contracting out (Cornelius, 1988; Sassen-Koob, 1989; Fernandez-Kelly and Garcia, 1989). Local economic conditions, which are imperfectly controlled for here with the key-location variables, may also explain short-term changes.

Increased Wages For many of the same reasons, certain employers also appear to be increasing wages to attract authorized workers. The second column of Table 3.1 shows the effect of each explanatory factor on the likelihood that firms report increasing wages. The predicted likelihood of reporting increased wages for typical firms in this sample is 2.4 percent.

A firm's location affects the likelihood of raising wages. Firms in both Miami and Texas border cities are approximately 2 percentage points less likely to report increasing wages than similar firms elsewhere. Those in New York City are 2.2 percentage points more likely to report increasing wages. There were no prior expectations regarding locational differences; however, it might be reasonable to speculate that the general availability of unauthorized workers may have changed little in Texas border cities and Miami while it may have declined in New York. It is even more likely, however, that these results also reflect other changes in local economic/labor market conditions.

As with the increased use of contract labor, firms with relatively greater proportions of Hispanic and Asian employees are likely to have increased wages. This may be due to a perception among such firms that the risk of hiring unauthorized workers is greater for them than for firms with fewer "foreign-appearing" workers. At the same time, however, a change of one standard deviation from the average proportion of Hispanics in a firm's workforce increases the likelihood of raising wages by less than 1 percentage point. Changing the proportion of Asians by the same amount results in an increased likelihood of raising wages of only 0.4 percentage points. Once again, smaller firm size increases the likelihood of employers increasing wages.

As with increased reliance on contract workers, the likelihood of increasing wages is much greater among firms that report having routinely hired unauthorized workers since the pre-IRCA period. Such firms are 9.5 percentage points more likely to increase wages to attract authorized workers than firms that do not routinely employ unauthorized workers. This is a rather strong association and implies that firms that have been relying on unauthorized workers are now responding to shifts in the availability of those workers and to the risk of sanctions by increasing wages.[67] This is the strongest finding yet that IRCA may be having a measurable impact on the U.S. labor market.

The Combination of Firm and Implementation Effects

We turn now from considering the influence of each of several firm characteristics and elements of IRCA's implementation on employment practices, to an evaluation of additive combinations of these effects. This portion of the analysis allows us to evaluate how employer responses to IRCA vary

[67] The 1986 law allowed employers to continue to employ unauthorized workers whom they had hired before November 6, 1986 without fear of sanctions. Such workers themselves, however, were not similarly protected from deportation.

Table 3.2 – Increased Use of Contractors and Increased Wages, by Hypothetical Firms[1] Receiving IRCA Implementation:[2] 1989 GAO Survey

	Low Profile Firm	High Profile Firm
Increased Contracting		
No implementation effect	3.2	10.4
Full implementation effect	8.9	25.8
Increased Wages		
No implementation effect	2.4	19.3
Full implementation effect	6.7	41.0

[1] **Hypothetical firm:**
High Profile = key area/industry, 5 employees, 25% Hispanic, 12% Asian, illegal hires, 350% hire rate.
Low Profile = other area/industry, 35 employees, 8% Hispanic, 2% Asian, no illegal hires, 60% hire rate.

[2] **Implementation Effects:**
Full Implementation = investigated/anticipates INS visit, compliant with I-9 requirements.
No Implementation = has received no implementation effects.

across different segments of the U.S. labor market. For example, by adding the effect of being in Los Angeles to that of being in a key immigrant industry, employer behavior in this small subset of firms can be contrasted with that of the more average, "baseline" firm. This type of comparison is critical because exclusive consideration of "the average firm" masks the behavior of unusual firms which—although small in number—are the focal point for enforcement efforts. It is important to estimate how enforcement efforts affect the decisions of this small subset of employers and how their responses differ from those of "average" employers.

Specifically, we evaluate the impact of a combination of "implementation effects" on two different types of employers. First, a "low-profile" firm whose characteristics are chosen to represent the majority of U.S. employers and second, a "high-profile" firm chosen to represent the unusual firm. "High-profile" firms are most likely to be affected by changes in the availability of unauthorized workers, while "low-profile" firms are less likely to be affected. The results of these combined effects are shown in Table 3.2.

A "high-profile" firm is considered to be most likely affected by changes in the availability of unauthorized workers and/or the risk of sanctions. An alternate "low-profile" firm is least likely to be affected. "High-profile" firms are small with high rates of labor turnover, located in key immigrant locations[68] and industries, are routine employers of unauthorized workers, and with relatively large shares of Hispanic or Asian workers in their workforce. Although 0.7 percent of all firms, these "high-profile" firms represent IRCA's greatest challenge. In contrast, the size and rate of labor

[68] The separate effects of each of the key locations presented in Table 3.1 are combined into one "key location" effect (i.e., the model was re-estimated with a single location dummy variable).

turnover of "low-profile" firms are those of the average U.S. firm. Typical "low-profile" firms are defined as follows: firms which are located in other than key locations or industries, do not report hiring unauthorized workers, and have shares of Hispanic and Asian workers in their workforces that are the same as those of the average U.S. firm.

It is possible that some firms of either profile may not directly experience the types of implementation effects that we measure here, while others may experience a range of such effects. "Full implementation effects" refers to firms influenced by all of the variables measuring IRCA's implementation, that is INS visits and I-9 compliance.[69] "No implementation effects" refers to firms having no experience with either INS visits or I-9 employment eligibility verification procedures. The effect of "full" and "no" implementation scenarios are then added to each of the "high-" and "low-profile" effects because it is precisely the implementation effects that are most amenable to manipulation by policymakers.

First, we evaluate the likelihood that each firm type would change its labor strategies absent the in direct experience of "implementation effects." "High-profile" firms which have not been investigated by the INS and do not comply with the I-9 employment eligibility verification procedures have a likelihood of increasing their use of contract workers by 10.4 percent. In contrast, the likelihood of increasing this practice is just 3.2 percent for "low-profile" firms that experience no implementation effects. Correspondingly, "high-profile" firms have a likelihood of 19.3 percent of increasing wages to attract authorized workers—a figure eight times as great as the 2.4 percent likelihood reported by "low-profile" firms. These differences in the behavior of these two groups of employers reflect variation in their underlying characteristics—particularly their reliance on the use of unauthorized workers—and illustrates the importance of considering both average and unusual firms.

Next, we add to each firm type the combined effects of the variables which directly measure IRCA implementation. "High-" and "low-profile" firms that have been visited by the INS and are compliant with I-9 regulation are both substantially more likely to report changing their employment practices. Specifically, "high-profile" firms that report having experienced "all implementation effects" have a 25.8 percent likelihood of increasing contracting and a 41.0 percent likelihood of increasing wages in the post-IRCA period. These probabilities are double those of "high-profile" firms which have neither experienced INS enforcement efforts nor voluntarily complied with IRCA's I-9 requirements.

These comparisons of combined effects demonstrate that the impact of IRCA is greatest on those firms it was designed to affect. Even in the absence of direct "implementation effects" the "high-profile" firms in this sample are apparently responding to changes in the labor pool from which

[69] See the discussion in the previous section of this chapter, "IRCA Implementation Effects."

they draw their workers and to the threat of sanctions. Furthermore, the direct experience of "implementation effects" affects significantly their labor strategies.[70]

Discriminatory Employment Practices

A number of observers have argued that IRCA's employer sanctions provisions might result in increased discrimination in the workplace. Prohibitions against hiring unauthorized workers sensitize employers to the national origin and citizenship status of workers, thus raising the possibility that some employers might discriminate on these bases. Furthermore, the procedure of verifying the work eligibility of new workers opens the door for some employers to require documentation selectively, i.e., only from those workers who "appear" to be foreign-born and thus potentially unauthorized.

In this chapter, we analyze the data from the GAO's third report.[71] The focus of our study differs from GAO's in that we do not address the prevalence of national origin and citizenship discrimination. Rather, our analysis focuses on the patterns of IRCA-related discrimination by examining the **statistical relationships** among firm characteristics, the implementation of IRCA, and discrimination. It is our view that a better understanding of the factors associated with discrimination may prove useful in reducing IRCA-related discrimination.

Following the GAO conventions, two forms of discrimination are considered which are based upon several survey questions (see GAO, 1990:Table 6.1):

- **National Origin Discrimination**: Employers reporting selectively documenting or refusing to hire job applicants or selectively documenting current employees based upon their foreign appearance or accent.

- **Citizenship Discrimination**: Employers reporting either hiring only U.S.-born workers or refusing to hire workers with temporary work authorization documents.

Discussion of Individual Relationships

As in the previous section, the sample is restricted to nonagricultural employers who were both aware of IRCA and had hired at least one

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[70] Strictly speaking, our "high-profile" designation refers only to those firms reporting the employment of unauthorized workers, or about 0.7 percent of firms nationwide (GAO, 1990:118). The number of firms receiving all implementation effects does not exceed the 0.8 percent of firms reporting INS visits (GAO, 1990:117). On balance, the direct impacts of IRCA's implementation are felt by relatively few firms.

[71] The analysis here—following the emphasis of the Task Force on IRCA-Related Discrimination (1990:12 and Appendix 2:1,77)—focuses on ways "to understand better the patterns of IRCA-related discrimination." This report does not address critiques of the GAO's methods.

employee in the year prior to responding to the survey. The sample further excludes firms with four or fewer employees because IRCA's anti-discrimination provisions apply only to firms with more than four employees.

National Origin Discrimination Our analysis of this sample indicates that the likelihood of a typical firm reporting a practice of national origin discrimination is 9.1 percent[72] (see Table 3.3). The analysis also suggests that firms in several key immigrant locations are more likely to report a practice of national origin discrimination than firms in other locations. Holding everything else constant, firms in Los Angeles, the remainder of California, New York City, and Texas (in areas other than border cities) are, respectively, 3.8, 2.9, 4.4 and 7.1 percentage points more likely to discriminate than firms in the rest of the United States.

Several firm characteristics influence the likelihood that employers use foreign appearance as a means of screening potential workers. On one hand, increasing the average firm's number of employees in the sample to the first standard deviation (from 24 to 82 employees) **reduces** the likelihood of firm's reporting this form of discrimination by 1.9 percentage points. On the other hand, increasing the proportion of a firm's workforce that is Hispanic from the sample's average of 7.1 percent to the first standard deviation above the average (25.4 percent), **increases** the likelihood that a firm reports national origin discrimination by 1.7 percentage points.

Although they constitute less than 1 percent of all employers in the GAO survey, firms reporting the routine employment of unauthorized workers are also more likely to report a practice of discrimination.[73] These firms' likelihood of reporting a practice of national origin discrimination is 6.0 percentage points greater than that for similar firms employing no unauthorized workers. Although perhaps somewhat counterintuitive, this finding suggests that firms reporting that they routinely employ unauthorized workers may use national origin discrimination as yet another means of avoiding sanctions for the employment of unauthorized workers.

In addition to firm characteristics, several aspects of IRCA implementation are also significantly related to discrimination. As discussed in the introduction of this chapter, education about IRCA and clarity about the provisions of the law may lessen discriminatory behavior. Indeed, firms receiving an INS Handbook for Employers are 2.1 percentage points less likely to discriminate than firms which do not receive that handbook on IRCA.[74]

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[72] This baseline likelihood is not intended to measure the overall prevalence of citizenship discrimination among all firms. Rather, it is an estimated likelihood that the typical firm discriminates—based on our sample choice and our definition of the typical firm. See discussion in the text and the notes to Table 6.3 for our definition of a typical firm.

[73] If some of the unauthorized workers employed in the firm had been hired before November 6, 1986, as this variable indicates, their employment is legally "grandfathered" and the firm is not liable for sanctions. Thus, these firms might use national origin to screen current employees and/or job applicants.

[74] The INS handbook includes information about how employers can avoid discrimination and explains

Table 3.3 – National Origin and Citizenship Discrimination, by Firm Characteristics and IRCA Implementation: 1989 GAO Survey

	National Origin	Citizenship
Baseline likelihood for the typical firm[1]	9.1	12.9
Percentage point change:[2]		
FIRM CHARACTERISTICS		
1. Los Angeles	3.8	–
2. Rest of California	2.9	-4.5
3. Texas border cities	–	9.9
4. Rest of Texas	7.1	9.3
5. New York City	4.4	–
6. Chicago	–	–
7. Miami	–	–
8. Key immigrant industry	–	–
9. % Employees Hispanic	1.7	–
10. % Employees Asian	–	–
11. Size (number of employees)	-1.9	-1.1
12. % Employees hired during 1988	–	–
13. Routine employer of unauthorized workers	6.0	–
IRCA IMPLEMENTATION		
Likelihood of sanctions		
14. Past INS worker investigation	–	–
15. Anticipated INS visit	–	–
Information		
16. Informed by INS handbook	-2.1	-3.7
17. Not informed by mass media	–	2.9
Clarity of Law		
18. Number of documents presented	-3.1	–
19. Prohibitions against discrimination	–	–
I-9 Document Verification		
20. Not in compliance	6.3	7.7

[1] "Typical" firms are defined as follows: in a non-key location, non-key industry, reports no unauthorized workers, has neither been nor anticipates being investigated by the INS, has not received an INS handbook but has received media information, is unclear about documents and anti-discrimination provisions, and in compliance with I-9 provisions. Additionally, firm size, the percent of employees who are Hispanic or Asian, and the proportion of new hires are evaluated at the population mean represented by this sample. These values were chosen because the majority of firms exhibit these characteristics; see Appendix Table A-3.2.

[2] Results are statistically significant at the .05 level or better (— otherwise). See discussion in the text for a fuller explanation of percentage point changes.

Understanding of the law is also associated with less discrimination. Employers who report that they are clear about the types of acceptable work-authorization documents are 3.1 percentage points less likely to discriminate than employers with similar characteristics who lack this understanding. Finally, those firms not in compliance with IRCA's I-9 requirements are 6.3 percentage points more likely to discriminate on the basis of national origin than firms that are compliant.[75]

that such discrimination is illegal (DOJ, 1987:9).

[75] As discussed in the appendix, the compliance variable is 1 for "in compliance" and 0 "otherwise".

Citizenship Discrimination The relationships reported above change notably when citizenship, rather than national origin discrimination, is considered. For the typical firm in this analysis, the likelihood of reporting a practice of citizenship discrimination is 12.9 percent.[76] Firms in Texas (both in border cities and elsewhere) are approximately 10 percentage points **more** likely to practice citizenship discrimination than their counterparts located elsewhere in the United States. Conversely, compared to the typical firm, firms in California (outside of L.A.) are 4.6 percentage points **less** likely to practice citizenship discrimination. Again, increasing the number of workers from the firm-average to the first standard deviation above the average reduces the likelihood of citizenship discrimination by 1.1 percentage points.

However, **no other firm characteristic**—neither the ethnic composition of the workforce nor the presence of unauthorized workers—**has a statistically significant relationship with the likelihood that a firm practices citizenship discrimination.** It is possible that employers believe that screening on citizenship status per se might exclude otherwise desirable workers;[77] or that they believe the practice to be an imperfect mechanism for excluding those who are not authorized to work.[78]

Access to information about IRCA again significantly lowers the likelihood of citizenship discrimination. Firms that received the INS Handbook for Employers are 3.7 percentage points less likely to discriminate than similar firms that had not received it. Furthermore, having received information about employer sanctions from radio, television, newspapers, or magazines is also associated with significantly less discrimination. Firms having received their information about discriminatory acts from the mass media are 2.9 percentage points less likely to engage in citizenship discrimination. Finally, as with the case of national origin, firms in compliance with IRCA's employment eligibility verification requirements are 7.7 percentage points

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Because the typical firm is in compliance, we calculate the change from compliance to noncompliance.

[76] This baseline likelihood is not intended to measure the overall prevalence of citizenship discrimination among all firms. Rather, it is an estimated likelihood that the typical firm discriminates—based on our sample choice and our definition of the typical firm. See discussion in the text and the notes to Table 6.3 for our definition of a typical firm. Furthermore, the GAO's reported frequency of citizenship discrimination is less than our baseline estimate because the GAO subtracts out those employers who report **both** citizenship **and** national origin discrimination.

[77] Just 43.9 percent of the 13.9 million foreign born counted in the 1980 census were naturalized U.S. **citizens**; fully 41.3 percent of the foreign born were estimated to be legally resident **noncitizen** aliens; the remaining 14.7 percent were estimated to be illegal residents. The proportion of noncitizens is greatest among Hispanics because of low rates of naturalization (Warren and Passel, 1987:Tables 1, 2).

[78] If firms are both uncertain about which documents establish citizenship and distrust the validity of documents (see GAO, 1990:62-67), they may view documentation procedures as an imperfect means of establishing authorized working status. The alternative, screening prospective workers on national origin, may be perceived as a reliable method of identifying potentially unauthorized workers. Note that when IRCA was enacted in 1986, an estimated 2.9 million unauthorized Hispanics constituted 93.3 percent of the unauthorized population and 22.1 percent of the total U.S. Hispanic population (Woodrow and Passel, 1989:Table 6; DOL, 1989:Table 1).

less likely to practice citizenship discrimination than similar firms which are not in compliance.

The Combination of Firm and Implementation Effects

While the immediately preceding discussion focuses on how discrimination changes as individual firm characteristics and implementation effects change, the analysis that follows calculates how discrimination varies with **combinations** of firm characteristics and implementation effects. As before, this allows us to simultaneously consider the effects of several characteristics—such as size and location—and provides important information about how the likelihood of discrimination varies across labor market segments. Identification of those unusual firms in which discrimination is more likely is useful in efforts to educate employers. As we did earlier, we first consider the "profile" of a firm most likely to be affected by IRCA and then the "profile" of a more typical firm that is less likely to be affected. The firm profiles are identical with those used in the discussion of labor force strategies.

As above, we use the individual relationships to estimate the additive effect of a combination of enforcement and educational strategies. "Full implementation" refers to firms which have received the effect of both INS visits and I-9 compliance. To these we have added the receipt of information and clarity of that information. The influence of "full" and "no" implementation effects are then added to each of the "high-" and "low-profile" firms. This comparison is again useful because, although firm characteristics cannot be affected by policymakers, implementation and enforcement strategies can. Firm characteristics have a dramatic effect on the likelihood of national origin discrimination. As indicated earlier, "high-profile" firms represent less than 1% of all U.S. firms. As such, **their behavior is in no way representative of the behavior of U.S. employers as a group**. When unexposed to either IRCA enforcement or education about the law, this very small proportion (0.7 percent) of U.S. firms has a 41.6 percent likelihood of reporting a practice of national origin discrimination. By comparison, **and given a similar lack of exposure to IRCA implementation**, the likelihood that a "low-profile" firm (i.e., an "average" U.S. firm) reporting a practice of national origin discrimination is 14.6 percent. It is also important to note that discrimination could be inadvertent because of unfamiliarity with the law.

These differences in the likelihood that a firm reports discriminating on the basis of national origin suggest a clear strategy for focusing efforts to educate and otherwise enforce IRCA's anti-discrimination provisions. It is this strategy that the Attorney General's Task Force on IRCA-Related Discrimination recommended and the Congress adopted in the Immigration Act of 1990.

For both firm types, full implementation of IRCA is associated with a much lower likelihood of reporting national origin discrimination. For the "high-profile" firm, information about, enforcement of, and compliance with I-9 provisions reduces the likelihood of this practice to 17.9 percent—a de-

crease of more than half. "Full implementation" of IRCA also reduces the likelihood that the low-profile firm reports a decrease in the practice of national origin discrimination by two-thirds—to 5.0 percent.

While "full implementation" also reduces citizenship discrimination, there appears to be less of a difference between our "low-" and "high-profile" firm. Our "low-profile" firm has a slightly greater likelihood of discriminating on the basis of citizenship than does our "high-profile" firm, respectively, 23.8 and 17.4 percent.[79] Unlike the practice of national origin discrimination, there is less of an association between firm characteristics and citizenship discrimination. For both types of firms, however, effective implementation reduces the likelihood of citizenship discrimination by about three-fourths, respectively 6.9 and 4.8 percent.

Conclusions

This chapter has examined the GAO's 1989 nationwide survey of firms in order to enhance our understanding of the law's impact on the labor market. It has tested systematically the statistical relationships between many characteristics of U.S. firms and components of IRCA's implementation thought to shape employer behavior. It has focused on those factors that have a significant influence on each of the following four employer-reported practices: 1) increased use of outside contractors; 2) increased wages to attract authorized workers; 3) national origin discrimination; and 4) citizenship discrimination.

The analysis suggests that **the law is having its greatest labor market impact on those firms that it was intended to affect** by inducing at least some of these firms to change their labor market strategies.

- "High-profile" firms (0.7 percent of all U.S. firms) are small enterprises, routine employers of unauthorized workers with relatively-large ethnic workforces. It is those firms that are likely to be most affected by either declines in the availability of authorized workers or the risk of sanctions. These firms are most likely to report increasing wages to attract authorized workers.

- All components of IRCA's implementation that can be measured by the GAO survey appear to increase employer awareness of the legal risk of hiring unauthorized workers. They also increase the likelihood that "high-profile" firms report changing their labor market strategies in response to IRCA.

[79] This difference is primarily due to the inverse relationship between citizenship discrimination and the routine employment of unauthorized workers. Although not statistically significant, the effects of this variable cause the likelihood that citizenship discrimination occurs in "high-profile" firms to be lower than that in "low-profile" firms.

At the same time, however, some firms report pursuing discriminatory hiring practices as a means of reducing the risk of employing unauthorized workers.

- "High-profile" firms (0.7 percent of all U.S. firms) are much more likely to report engaging in national origin discrimination than "low-profile" firms. However, they are no more likely to report citizenship discrimination than are "low-profile" firms.

- The various enforcement and educational elements of IRCA, taken together, appear to be an effective means of significantly reducing reported discriminatory practices. Such an array of efforts halves national origin and citizenship discrimination by both "high" and "low-profile" firms.

The analysis indicates that both greater educational efforts and increasing employer compliance with verifying employment eligibility are effective means in combatting the discriminatory hiring practices found in GAO's final report. Increasing the exclusive hiring of authorized workers, while at the same time reducing discrimination against foreign-looking and -sounding persons, clearly depends on the continued and systematic implementation of all elements of the law.

Appendix to Chapter 3: Technical Notes

This appendix provides the technical background for the results presented in the previous chapter. It presents a discussion of the data sample, variable definitions, descriptive statistics for each of the two samples, and the formulas which were used in the calculation of the probabilities.

The data analyzed in Chapter 5 come from an anonymous national survey of employers conducted by the General Accounting Office (GAO) during the summer of 1989. GAO's survey questions were directed to employers' adoption of specific hiring practices resulting from the implementation of IRCA. The survey asked for information about the respondents' understanding of the law, employment practices, and costs of complying with IRCA's I-9 requirement. In an effort to encourage candid answers, the questions avoided any mention of either the legality or fairness of particular employment practices. The word "discrimination" was not used in the survey.

The GAO selected a stratified random sample from a private marketing service's database.[80] The original sample of 9,491 employers was adjusted to 6,317 because some employers had gone out of business while others reported either that they had no employees or that the hiring for their establishment was done elsewhere. Of the adjusted sample, 69 percent responded to GAO's survey—resulting in a final sample of 4,362 employers.

Table A3.1 provides a list of the independent variables used in our analysis. Included in the table is information about the underlying survey questions, as well as notes about how variables are coded. Descriptive statistics for all variables used in the analysis are presented in Table A3.2. Recall that throughout our analysis, the sample analyzed was restricted to nonagricultural firms which were aware of IRCA and had hired at least one new worker during 1988. In analyzing discrimination, we further restricted the sample to employers with more than four employees. The means and standard deviations for each sample, weighted to their respective population values, are given in Table A3.2.

Each of the dependent variables is coded as 1 for employers who reported engaging in a given practice; otherwise, it is coded as 0. Because the dependent variables are dichotomous random variables, logistic regression was used throughout this analysis.[81] The estimated logit coefficients are presented in Table A3.3 for labor market strategies, and in Table A3.4 for discrimination. These coefficients were used in the calculation of the predicted changes in probabilities as described below.

[80] The sample was stratified by both geographic area and industry.

[81] For a discussion of this type of regression model, see Maddala (1983).

Appendix Table A3.1 – Variable Construction: List of Variables, Corresponding Survey Questions, and Notes

Variables	QuestionNumber	Notes
FIRM CHARACTERISTICS		
1. Los Angeles	–	Locations derived from the sampling frame.
2. Rest of California	–	
3. Texas border cities	–	
4. Rest of Texas	–	
5. New York City	–	
6. Chicago	–	
7. Miami	–	
8. Key immigrant industry	–	Industry derived from the sampling frame. Combines "high" and "medium" concentrations of Hispanics and Asians.
9. % Employees Hispanic	27	Number of Hispanic employees as a percent of all employees.
10. % Employees Asian	27	Number of Asian employees as a percent of all employees.
11. Size	27	Number of employees as of 12/31/88.
12. % Employees hired during 1988	1 & 27	Number of employees newly hired during 1988 as a percent of all employees.
13. Routine employer of unauthorized workers	14 & 15	The firm suspects that it employs unauthorized workers, at least some of whom were hired before 11/7/86.
IRCA IMPLEMENTATION EFFECTS		
Likelihood of sanctions		
14. Past INS investigation	12	Firm has been visited by INS to determine if any unauthorized workers were employed.
15. Anticipated INS visit	13	Firm expects to be visited by INS during the next 12 months.
Information Source		
16. Informed by INS handbook	19	Firm received information about the law from an INS handbook.
17. Informed by mass media	19	Firm received information about the law from radio, television, newspapers, or magazines.
Clarity of Law		
18. Number of documents presented	20	Firm is very clear about work authorization documents.
19. Prohibitions against discrimination	20	Firm is very clear about prohibitions against employers who discriminate.
I-9 Compliance		
20. Completely in compliance	2	Firm has completed I-9s for all new employees.

Source: 1989 GAO Survey

Appendix Table A3.2 – Means and Standard Deviations for Firm Characteristics and Implementation Effects, Labor Market Strategies and Discrimination Samples

Variable	Labor Market Strategies Sample		Discriminatory Practices Sample	
	Mean	Standard Deviation	Mean	Standard Deviation
FIRM CHARACTERISTICS				
1. Los Angeles	0.04	0.19	0.04	0.19
2. Rest of California	0.09	0.28	0.09	0.28
3. Texas border cities	0.01	0.09	0.01	0.10
4. Rest of Texas	0.06	0.24	0.07	0.26
5. New York City	0.04	0.20	0.04	0.20
6. Chicago	0.04	0.18	0.03	0.17
7. Miami	0.01	0.10	0.01	0.10
8. Key immigrant industry	0.35	0.48	0.37	0.48
9. % Employees Hispanic	7.76	17.33	7.14	18.30
10. % Employees Asian	2.30	9.64	2.38	11.62
11. Number of employees	36.20	70.57	23.91	58.63
12. % Employees hired during 1988	59.43	296.97	54.57	251.27
13. Routine employers of unauthorized workers	0.01	0.08	0.00	0.06
IRCA IMPLEMENTATION EFFECTS				
Likelihood of sanctions				
14. Past INS investigation	0.00	0.07	0.00	0.06
15. Anticipated INS visit	0.03	0.16	0.03	0.16
Information				
16. Informed by INS handbook	NA	NA	0.27	0.45
17. Informed by mass media	NA	NA	0.58	0.49
Clarity of Law				
18. Number of documents presented	NA	NA	0.32	0.47
19. Prohibitions against discrimination	NA	NA	0.18	0.38
I-9 Compliance				
20. Completely in compliance	0.58	0.49	0.44	0.49
Sample size =	3,481		2,240	

NA Not applicable.

Note: The descriptive statistics shown in this table are weighted to the population values for each respective sample.

[1]Sample consists of nonagricultural firms which were aware of the law and had hired at least one new employee in 1988.

[2]Sample consists of nonagricultural firms with more than four workers which were aware of the law and had hired at least one new employee in 1988.

Source: 1989 GAO Survey

Appendix Table A3.3 – Increased Use of Contractors and Increased Wages, Logistic Regression Results

	Increased Use of Contractors		Increased Wages to Attract Authorized Workers	
	Beta	Standard Error	Beta	Standard Error
FIRM CHARACTERISTICS				
1. Los Angeles	-.1038	(.3457)	-.0417	(.3211)
2. Rest of California	.8214	(.2311)	.3134	(.2458)
3. Texas border cities	.1712	(.4094)	-.9757	(.5625)
4. Rest of Texas	1.1319	(.2658)	.3236	(.3178)
5. New York City	.0132	(.4569)	.6663	(.3573)
6. Chicago	.1131	(.3912)	-.2594	(.4338)
7. Miami	.1548	(.3792)	-1.1195	(.5569)
8. Key immigrant industry	-.2824	(.1595)	.0083	(.1802)
9. % Employees Hispanic	.0108	(.0022)	.0154	(.0026)
10. % Employees Asian	.0101	(.0038)	.0147	(.0037)
11. Size (number of employees)	-.0024	(.0015)	-.0028	(.0016)
12. % Employees hired during 1988	.0002	(.0001)	.0002	(.0001)
13. Routine employer of unauthorized workers	.8002	(.4201)	1.6874	(.3540)
IRCA IMPLEMENTATION EFFECTS				
Likelihood of sanctions				
14. Past INS worker investigation	.7393	(.3877)	.5953	(.4210)
15. Anticipated INS visit	.3116	(.2979)	.2002	(.3300)
I-9 Document Verification				
16. Completely in compliance	-.0518	(.1565)	.1080	(.1754)
Model ChiSquare	113.75		111.41	

Source: 1989 GAO Survey

Predicted Changes in Probabilities

The predicted changes in the probability of an employer reporting a given practice that result from a change in each independent variable—holding other variables constant—are presented in Chapter 3, Tables 3.1 and 3.3. Only those results which are statistically significantly different from zero at the 10% level or better are presented. These changes in probabilities were calculated using the following formula (Petersen, 1985):

$$\Delta P = P(D=1 \mid L=\beta x_1) - P(D=1 \mid L=\beta x_0)$$

$$= \frac{e^{\beta x_1}}{1+e^{\beta x_1}} - \frac{e^{\beta x_0}}{1+e^{\beta x_0}}$$

where x_0 is the vector of independent variables before the change and x_1 is the vector of variables after a single independent variable is changed.

Appendix Table A3.4 – Discriminatory Practices: National Origin and Citizenship Discrimination, Logistic Regression Results

	National Origin		Citizenship	
	Beta	Standard Error	Beta	Standard Error
FIRM CHARACTERISTICS				
1. Los Angeles	.3968	(.2143)	–.0595	(.2092)
2. Rest of California	.3136	(.1882)	–.4940	(.1900)
3. Texas border cities	.1177	(.3323)	.6933	(.2741)
4. Rest of Texas	.6590	(.2425)	.6546	(.2144)
5. New York City	.4488	(.2715)	.2425	(.2499)
6. Chicago	.2753	(.2376)	–.1383	(.2225)
7. Miami	–.2991	(.3207)	–.3246	(.2956)
8. Key immigrant industry	.1848	(.1291)	.0501	(.1234)
9. % Employees Hispanic	.0104	(.0021)	.0024	(.0022)
10. % Employees Asian	.0049	(.0035)	.0039	(.0033)
11. Size (number of employees)	–.0043	(.0015)	–.0018	(.0010)
12. % Employees hired during 1988	–.0002	(.0002)	.0000	(.0001)
13. Routine employer of unauthorized workers	.5768	(.3483)	-.4816	(.5429)
IRCA IMPLEMENTATION EFFECTS				
Likelihood of sanctions				
14. Past INS worker investigation	–.2021	(.4391)	–.0592	(.4604)
15. Anticipated INS visit	–.0067	(.2909)	–.4177	(.3507)
Information				
16. Informed by INS handbook	–.2908	(.1353)	–.3827	(.1324)
17. Informed by mass media	.0468	(.1272)	–.2418	(.1230)
Clarity of Law				
18. Number of documents presented	–.4524	(.1528)	.0056	(.1438)
19. Prohibitions against discrimination	.2843	(.1739)	.1838	(.1634)
I-9 Document Verification				
20. Completely in compliance	–.6000	(.1323)	–.5598	(.1309)
Model Chi-Square	123.85		87.89	

Source: 1989 GAO Survey

Chosen to represent the majority of U.S. firms, x_0 is defined as follows: each of the seven key immigrant locations = 0,[82] key immigrant industry = 0, routine employer of unauthorized workers = 0, past INS inspection of workers = 0, anticipated INS visit = 0, and completely in compliance = 1. Furthermore, the continuous variables, number of employees, percent of employees who are Hispanic, percent of employees who are Asian, and percent of employees who were hired during 1988 are all evaluated at the means presented in Table A3.1.

[82] This has the effect of evaluating the change for a firm located in the rest of the United States to a similar firm located in each of the seven key immigrant locations.

Appendix Table A3.5 – Variable Set Definitions for Construction of Hypothetical Firm Profiles and IRCA Implementation Effects, Labor Market Strategies and Discriminatory Practices Analyses

	Labor Market Strategies		Discriminatory Practices	
	Firm Risk of Sanctions Profile			
	"Low"	"High"	"Low"	"High"
FIRM CHARACTERISTICS				
1. Key immigrant location	0	1	0	1
2. Key immigrant industry	0	1	0	1
3. % Employees Hispanic	8	25	8	25
4. % Employees Asian	2	12	2	12
5. Size (number of employees)	35	5	35	5
6. % Employees hired during 1988	60	350	60	350
7. Routine employer of unauthorized workers	0	1	0	1
	IRCA Implementation Effects			
	"None"	"All"	"None"	"All"
IRCA IMPLEMENTATION				
Likelihood of sanctions				
14. Past INS worker investigation	0	1	0	1
15. Anticipated INS visit	0	1	0	1
Information				
16. Informed by INS handbook	NA	NA	0	1
17. Informed by mass media	NA	NA	0	1
Clarity of Law				
18. Number of documents presented	NA	NA	0	1
19. Prohibitions against discrimination	NA	NA	0	1
I-9 Document Verification				
20. Completely in compliance	0	1	0	1

NA Not applicable

Source: 1989 GAO Survey

Changes were calculated for unit changes in the discrete random variables, e.g, for New York = 1 versus New York = 0. For the continuous variables, a unit change is defined as a change between the mean and the mean plus the standard deviation.[83] Thus, for firm size and percent of employees who are Hispanic, Asian, or newly hired, changes were calculated from the sample mean to the first standard deviation above the mean. These predicted changes in probabilities can be interpreted as the change in the probability of an employer reporting a given practice, such as increasing

[83] This definition was chosen because it represents a relatively standard unit for measuring the change in a continuous random variable.

wages, that results from a unit change in an independent variable, e.g., firm size, **holding all other variables constant**.

Calculation of the Probabilities for "High-Profile" and "Low-Profile" Firms

While the above approach allows us to consider the effect of independent variables one at a time, it is also important to consider the effects of several characteristics simultaneously. To this end, we construct profiles of two different types of firms, as well as two different IRCA-implementation scenarios. The exact definitions of firm profiles and IRCA implementation scenarios are given in Table A3.5.

The "high-profile" firm has characteristics that suggest it is more at risk of incurring employer sanctions, while the "low-profile" firm has characteristics that suggest it is less at risk. The "high profile" firm represents the relatively small number of U.S. firms (0.7 percent) that tend to employ unauthorized workers and are therefore at the greatest risk of employer sanctions. The "low-profile" firm represents the more typical U.S. whose characteristics make it less at risk of employer sanctions.

In addition to constructing these firm profiles, we also construct implementation scenarios. "High implementation" refers to a scenario in which IRCA has been fully implemented within the firm and the firm has fully incorporated IRCA's relevant provisions into its hiring practices. This case is intended to capture the maximum effect of full implementation of IRCA. "Low implementation" refers to the case where employment practices remain unchanged and IRCA has thus not been implemented at all.

Each of the four employer practices discussed were re-estimated using a model in which all of the key location variables were collapsed into one key location variable and all other variables remained the same.[84] Using the estimated coefficients from this procedure, the probability of a firm reporting a particular employment practice is calculated for these firms and implementation strategies using the following formula (Petersen, 1985):

$$P(D=1 \mid Firm_i, Implementation_{ii}) = \frac{e^{\beta x_{ii}}}{1+e^{\beta x_{ii}}}$$

where i = high or low, and x_{ij} represents the vectors of variables given in Table A3.5. The results of this analysis are presented in Tables 2 and 4 in Chapter 3.

[84] In these models, key location equals 1 if **any one** of the individual locations equals 1. It is 0 otherwise. This was done in order to capture the overall effect of being in any key immigrant location. Although not shown, the estimated coefficients for the non-location variables change very little as a result of this redefinition of location.

CHAPTER 4: CONCLUSIONS

More than four years have elapsed since the enactment of IRCA and more than two years since that law's employer sanctions provisions became fully effective. Although we cannot yet definitively assess either the law's effectiveness or effects, we are able to make a more informed cumulative judgment than last year about the law's **effects,** while continuing to observe and assess two critical measures of its **effectiveness**—illegal entries and access by unauthorized workers to the U.S. labor market. The observations about both types of results thus retain a somewhat "interim" quality while we continue to work toward what we think will be the more definitive work to be reported in next year's review of employer sanctions.

Our cumulative judgment on IRCA's effects relies on data that are not much more authoritative than those used in our earlier assessment. Hence, they too should continue to be seen as tentative. Yet, both the additional observations and the additional time to evaluate the provisional conclusions reached in *The President's First Report*—particularly with regard to the law's operation on local labor markets—allow us to attach more confidence to our results.

IRCA Implementation

During the past year, employer sanctions-related policies and operations have been evaluated both by the implementing agencies and outside reviewers. In their third and final report on employer sanctions mandated by IRCA, GAO reviewed employer sanctions implementation and concluded that employer sanctions had been carried out satisfactorily by the implementing agencies. In this report, GAO made specific recommendations for refining implementation of the sanctions provisions. Similarly, the Task Force on IRCA-Related Discrimination, although focusing on improvements in the anti-discrimination provision, recommended changes in the way the employer sanctions program is implemented.

NOTE: The third through fifth paragraphs were written principally by the Immigration and Naturalization Service.

During 1990, INS focused on refining the employer sanctions program through strengthening central policy oversight, increasing coordination and consistency in operations, standardizing and increasing the usefulness of information collected in sanctions cases, and revising the *Handbook for Employers* and other public information documents. These refinements, many of which are ongoing, should improve the effectiveness of sanctions implementation.

Standardization of Employment Authorization Documents

Both GAO and the Task Force on IRCA-Related Discrimination concluded that the reported discrimination attributed to IRCA related to confusion over the number of documents in use to demonstrate work eligibility of aliens. During 1990, INS began to issue the Employment Authorization Document Servicewide. This standardized document, which clearly shows the validity period for authorized employment and includes a photograph, signature, and other security features, is expected to help eliminate employer confusion and to improve understanding concerning alien work eligibility. To reduce further the number of documents used by permanent resident aliens to demonstrate employment eligibility, INS is also taking steps to replace the many old versions of the I-151 "Green" card with the new secure edition of the I-551. The substantial reduction in types of INS-issued documents showing employment eligibility should help reduce employer confusion and misunderstanding and increase compliance with all parts of Section 274—employer sanctions, anti-discrimination, and fraudulent documentation.

IRCA Effectiveness

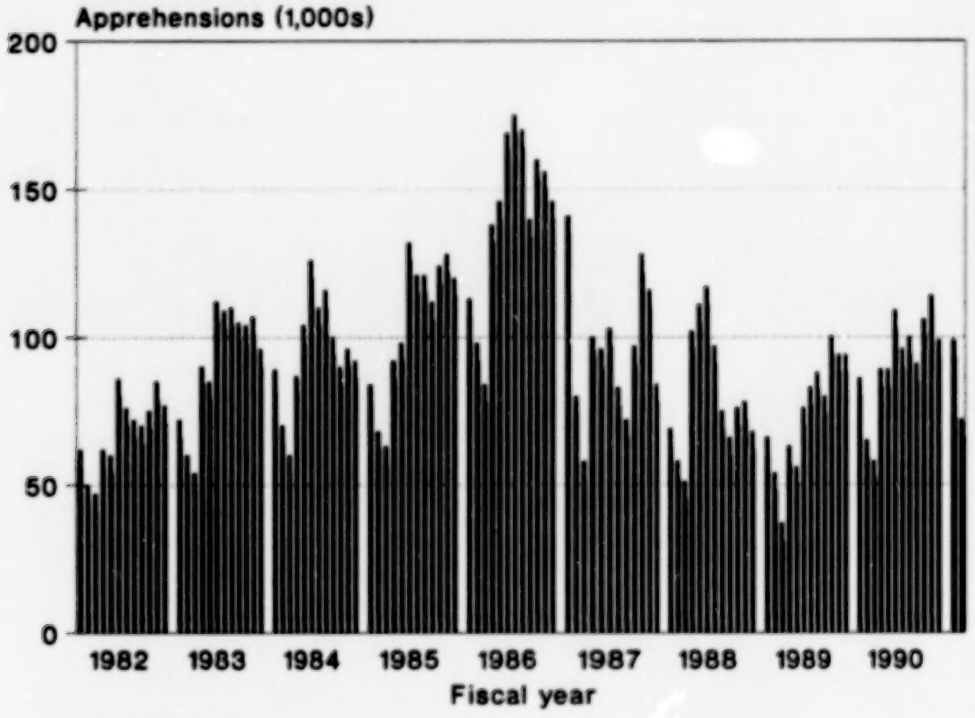
Illegal Entries

One of the most frequently used proxies for the effectiveness of IRCA in reducing significantly illegal immigration is the number of apprehensions along the U.S.-Mexico border. Although use of that yardstick to measure changes in illegal immigration is widely understood to be highly inexact,[85] few observers of the immigration scene are able to resist the attraction of the apprehension proxy.

Despite continued pressures for migration from sending countries, apprehensions of illegal aliens have continued at lower levels than in the pre-IRCA period. Although much of the reduction can be attributed to the IRCA legalization programs, a portion of the reduction can be attributed to other factors, including the implementation of employer sanctions. This reduction should also be considered in view of the continuing upward trend in apprehensions each year prior to the passage of IRCA. Although the level of apprehensions in 1990 was higher than in the preceding year, in the absence of IRCA, apprehensions would be expected to be considerably

[85] See Passel et al. (1990) for a full discussion of the limitations of apprehensions data.

Figure 4.1 – Deportable Aliens Apprehended, Monthly Data Centered on March, FY82 to FY90



Source: INS Statistic Branch

greater. The effect of employer sanctions on this reduction, however, is difficult to estimate. Similarly, since the passage of IRCA, the rate at which nonimmigrants overstay their lawful period of admission has continued at a level lower than before that legislation, suggesting that employer sanctions may have had a dampening effect on nonimmigrant overstays as well.

Figure 4.1 displays monthly apprehension data for 1982 through 1990. While numerous observations about these flows are possible, two in particular might help put the discussion about apprehensions in perspective. First, it is not unusual for apprehension data to surge dramatically in response to significant "events." The sharp deterioration in Mexico's economy beginning in 1982 was followed by a 34.9 increase in apprehensions in fiscal year 1983; and passage of IRCA in 1986 was followed by a 31.6 decrease in apprehensions in fiscal year 1987. Yet, until fiscal year 1986, the overall trend had been one of significant increases. Following the passage of IRCA, however, apprehensions decreased significantly each year until 1990[86]—when they began to increase again. Second, while the annual

[86] See *The President's First Report* (President's Report, 1991:Chapter 11) for a full discussion of the range of plausible explanations for such a drop.

increases between 1982-1985 and annual decreases between 1987-1989 have been notable, it is the 1986 peak that makes them most noticeable.[87]

The resumption of a significant (23.8 percent) upward movement in apprehensions in 1990 following three years of significant decreases is cause for concern. For while the measure is crude, and its relationship to actual entries unclear,[88] measures that gauge the efficiency of Border Patrol personnel[89] and several other types of evidence—much of it clearly speculative in nature—seem to support the overall trend shown by gross apprehension statistics. These measures also appear to suggest that notwithstanding its cause or depth, the drop in apprehensions in the immediate post-IRCA years may have been more of a pause than a change in behavior.[90] As stated previously, we will continue to monitor apprehension levels for long-term deterrent effects resulting from employer sanctions.

Employer Compliance with Workplace Regulations

The investigation of the nexus between employer compliance with the minimum wage and overtime provisions of the Fair Labor Standards Act

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[87] Although it has received relatively little attention, it is likely that the 34.1 percent surge in apprehensions in fiscal year 1986 was heavily influenced by the possibility of amnesty—as proponents of setting a more distant legalization eligibility date had anticipated. If this was indeed the case, the equally sharp drop (31.6 percent) in apprehensions in fiscal year 1987 would reflect primarily the artificiality of the 1986 figures.

[88] For example, some observers feel that one of the key effects of additional Border Patrol attention to interdiction is to bring about additional reliance on the use of "coyotes," i.e., professional alien-smugglers (see Cornelius, 1990a; Massey et al, 1990)—despite a sharp decline in coyote apprehensions by the INS. Furthermore, one team of researchers has found evidence that coyotes both facilitate **and stimulate** the illegal flow (Bach and Brill, 1991; Cornelius, 1990:a). Although there have been several attempts to model the relationship of apprehensions to actual entries (see especially President's Report, 1991:Chapter 11; Espenshade, 1990; Crane et al., 1990), these models cannot account for either changes in the efficiency of coyotes or in the perseverance of those seeking to cross the border with or without assistance.

[89] A better measure is the number of apprehensions **per linewatch hour**. This measure controls for variations in Border Patrol effort devoted to controlling illegal border crossing, rather than such other activities as interior enforcement, employer education, drug interdiction, and shifting of Border Patrol attention from more "productive" sectors to less productive ones. That measure, however, also showed a sharp increase in 1990—increasing from 104 in 1989 to 130 in 1990.

[90] There have been several significant changes both in the demographic composition and the source regions (especially from within Mexico) of the apprehended. See Bean et al. (1990) for a description of these characteristics. See also Cornelius (1990a) for a learned discussion of the longer-term trends and causes for these changes. Evidence that the immediate post-IRCA period reflected both a pause and a realignment of illegal immigration sources is indirect, yet on balance "compelling"—considering evidence which suggests that the supply of unauthorized aliens in key economic sectors in areas of high immigrant concentrations is not appreciably tighter (see especially Bach and Brill, 1991; and Crane et al., 1990). Among additional noteworthy analytical works are the following: (a) estimates based on the 1988 Current Population Survey that indicates that "...IRCA has not cut off the flow of new undocumented immigrants to the United States...But we are not able to make a determination...whether IRCA has reduced the flow...to below the pre-IRCA estimates" (Woodrow and Passel, 1990:66); and ethnographic studies of source communities in Mexico (Massey et al, 1990; Cornelius, 1990a) and small snowball samples of illegal Mexican workers in California (Cornelius, 1990a) and in other U.S. locations (Griffith and Runsten, 1991).

(FLSA) and the employment verification eligibility provisions of IRCA proceeded from several simple propositions. Most important among them is that employer compliance with what amounts to a new employment standard—the requirement that employers hire only workers who can demonstrate that they are authorized to work in the United States—would somehow be related to employer observance of other labor standards legislation. In testing this general proposition, we reviewed the records of field investigations by the Department of Labor's Employment Standards Administration, Wage and Hour Division (ESA/WHD).

The pursuit of the link between violations of IRCA and violations of the relevant provisions of the FLSA focused particularly on firms designated by ESA/WHD Investigators as STEP (Special Targeted Enforcement Program) firms. This designation is assigned to firms that local Wage and Hour officials think are relatively more likely to employ illegal aliens—and hence likely to be violating a variety of labor laws. Not surprisingly, the STEP designation proved to be a good predictor of noncompliance with the employment eligibility verification provisions of IRCA across a subset of selected industries and geographic locations.[91]

While a number of data limitations[92] restricts the amount of confidence that can be attached to some of our results, it is clear that among the firms investigated by ESA/WHD, about three-fifths and two-thirds respectively appear to be violating the relevant IRCA and FLSA provisions. Compliance with each statute is related with the size of a firm's workforce: the smallest firms are most likely to be found noncompliant. In addition, violations of both statutes often occur simultaneously. More than 66 percent of the firms that violate FLSA statutes also fail to properly discharge their employment eligibility verification responsibilities under IRCA, while 70 percent of those violating IRCA are also cited for FLSA infractions. **Fully 43 percent of all ESA/WHD nonagricultural investigations uncovered evidence that the firm is violating both statutes.**

However, the relationship becomes more complex when compliance with each of the two statutes under observation is desegregated by location and STEP designation. Firms within the five states the GAO identifies as "high-alien States," but outside the 19 communities where the largest share of the population sought legalization under IRCA, received proportionately

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[91] Controlling for industry, however, STEP status appears more strongly associated with FLSA rather than IRCA violations. Apparently, employers who have routinely employed unauthorized workers are more likely to keep adequate records of their employees' work authorization verification than satisfy wage and hour regulations.

[92] Two among these are particularly troubling. First, actual data on the legal status of employees in firms where IRCA and FLSA violations are found are unavailable. Under IRCA, ESA/WHD Investigators only observe and report employer compliance with the employment verification eligibility requirements of IRCA; infractions are forwarded to the INS. That agency follows through with only a fraction of these cases. Second, the verification of FLSA infractions in sectors where unauthorized workers are reluctant to talk with authorities is very difficult. This difficulty gives rise to concerns that IRCA may be contributing to the deterioration of the working conditions of some unauthorized workers.

fewer FLSA citations than firms either in high-alien communities or in low-alien States. With regard to IRCA, however, the relationship is in part inverted. While STEP-designated firms receive consistently more IRCA citations than nonSTEP ones, firms in communities of high-alien concentration appear to be meeting their IRCA requirements more than their FLSA ones.

Explaining these differences is a highly speculative exercise. It is possible that employers may perceive both the probability and the "cost" of violating IRCA as being higher than that of violating the relevant provisions of the FLSA. It is also possible, however, that complying with the IRCA employment eligibility verification requirement is both "easier" and less costly than complying fully with the FLSA.

IRCA Effects

The GAO's Findings on Employer Adaptation to Employer Sanctions

We have analyzed the GAO's 1989 nationwide random survey of U.S. employers. The analysis has been fashioned after the one undertaken last year on that organization's 1988 employer survey. Specifically, it focuses on employer responses on whether they changed their labor force strategies or adopted discriminatory practices **as a result of IRCA**. Firm responses were examined by location, industry and the demography of its labor force.[93]

Labor Force Strategies

Many policymakers had expected employers to increase wages and upgrade working conditions as IRCA would restrict the availability of unauthorized workers (U.S. Senate Judiciary Committee, 1985; GAO, 1988:69). This was thought to be most likely to occur in firms that reported the routine employment of unauthorized workers[94] (GAO, 1989)—and hence firms now at greater risk of sanctions. Our analysis of the GAO data indicates that many of these employers were more likely to have turned to **outside contractors** and/or to have **increased wages** than those not reporting employing unauthorized workers. Firms investigated by the INS for illegal employment practices are also more likely to use contractors than firms not investigated. This implies that firms that had been relying on unauthorized workers are now responding both to shifts in the availability of those workers and to the risk of sanctions. On balance, and on the basis of self-reporting, the analysis suggests that IRCA may be having a measur-

[93] Logistic regression—a statistical method that considers the simultaneous effect of multiple variables—was used to determine which of these several factors are significantly related to each employer response.

[94] These workers would be rendered more exploitable as a result of IRCA (see Kamasaki and Purtell, 1985; Waldinger and Lapp, 1991).

able impact on the segment of U.S. employers who are most at risk from sanctions.

National Origin and Citizenship Discrimination

Prohibitions against hiring unauthorized workers sensitizes employers to the national origin and citizenship status of workers, thus raising the possibility that some employers might discriminate on these grounds. The GAO (1990:71) concluded that "a widespread pattern of discrimination has resulted against eligible workers" as a result of IRCA. This conclusion was based solely on GAO's analysis of their 1989 national employer survey. **It is these data that are analyzed here**. The focus of our study differs from GAO's in that we do not address the prevalence of discrimination. Rather, we focus on the patterns of IRCA-related discrimination by examining the **statistical relationships** between firm characteristics, the implementation of IRCA, and discrimination. It is our view that a better understanding of the factors associated with discrimination may prove useful in reducing IRCA-related discrimination.

As discussed in the Task Force report, and confirmed by our analysis, there is a positive association between employers who hire Hispanics or unauthorized workers and national origin discrimination. Even after controlling for several other factors, increasing the proportion of a firm's workforce that is Hispanic **increases** the likelihood that an employer reports **national origin discrimination**, albeit by a small amount. Conversely, **no firm characteristic**—neither the ethnic composition of its workforce nor the presence of unauthorized workers—has a statistically significant relationship with citizenship discrimination.[96]

The Impact of the "Full Implementation" of Employer Sanctions

We have also estimated the effect of the law's "full" implementation (i.e., the employer's knowledge of and compliance with IRCA's employment verification eligibility requirements as well as his/her actual contact with INS investigators), on firms most at risk of violating employer sanctions and have further contrasted these effects to those on the typical U.S. firm. We have called the first type of firm—a small firm with an ethnic workforce and a routine practice of hiring unauthorized workers—a "high-profile" firm. These firms comprise only 0.7 percent of all U.S. firms. "Low-profile" firms have the opposite characteristics and represent the vast majority of U.S. firms.

The analysis suggests that a "high-profile" firm which has not been investigated by the INS and does not comply with the employment eligibility verification procedures has a likelihood of 19.3 percent of **increasing wages** to attract authorized workers—a figure eight times as great as the

[96] It is possible that employers believe that screening on citizenship status might exclude otherwise desirable workers; or that they believe the practice to be an imperfect mechanism for excluding those who are not authorized to work.

2.4 percent likelihood reported by "low-profile" firms. When a "high-profile" firm has received IRCA's full implementation, the likelihood of it increasing wages rises to 25.8 percent, while the likelihood of it **increasing contracting out** rises to 41.0 percent.

Although in no way representative of U.S. employers as a group, "high-profile" firms not yet exposed to education and/or enforcement have an unusually high likelihood of engaging in national origin discrimination — 41.6 percent. This is nearly three times that of those "low-profile" firms not receiving any IRCA implementation actions. **Significantly, receiving the full implementation of IRCA is associated with a substantially lower likelihood of reporting national origin discrimination for both firm types**. Specifically, for the "high-profile" firm, information about, enforcement of, and compliance with the employment eligibility verification provision reduces the likelihood of national origin discrimination by nearly three-fifths. In "low-profile" firms, this "full" implementation of IRCA also reduces the likelihood of national origin discrimination by two-thirds.[96]

Our analysis suggests that the law is inducing at least some of the firms it was intended to affect to change their labor market strategies. What is most notable, however, is that while single elements of IRCA's implementation affect employers, it is their **combined effect** that has a truly substantial impact. Yet only a small fraction of firms actually receive the full array of the law's implementation effects.

IRCA's Local Effects

Our analysis of the GAO employer survey generates understandable optimism about the potential of more extensive and persistent enforcement of sanctions for bringing about desirable changes[97] in the labor market behavior of firms most likely to employ unauthorized workers. IRCA has had appreciable effects on the way both unauthorized workers and their employers are behaving in the post-IRCA environment. The process through which newly arriving illegal aliens become integrated into local labor markets has changed dramatically. That change is reflected both in terms of taking much more time to find steady work (hence the high incidence of open-air day labor markets in cities of high immigrant concentrations) and in the frequency with which some employers apparently enlist their foreign-born workers (legal or illegal) in the recruitment of additional workers—without regard to legal status. In other words, **the mechanism for connecting employers with foreign workers in primarily steady employment relationships has <u>not</u> changed.** If anything, social networks—family, kin, friends—have become even more important than be-

[96] Unlike with the practice of national origin discrimination, there is less of an association between firm characteristics and citizenship discrimination. For both types of firms, however, effective implementation reduces the likelihood of citizenship discrimination by about three-fourths.

[97] E.g., changes in wages offered and closer attention to the legal status of new employees. See Chapter 3 of this report.

fore as a source of critical information and support while the newly arrived illegals seek steady employment.[98]

The European Experience

Our monitoring of the European experience with employer sanctions for ideas and experiences that might be transferable to the United States has been done fully aware of the limits of comparative learning. Differences in the relationship and relative power of the Executive vis-a-vis the Legislative branch and the locus of decision making on immigration matters define both the nature and timeliness of decisions on immigration policies. Differences in many other attributes of a nation's civic and political culture—including fundamental perceptions about the relationship of the government to the governed, the degree to which the government's response to the issue is seen as legitimate, the role of the judiciary on immigration issues, and the strength and mobilization capabilities of affected groups—shape both what is politically feasible in each case and the degree to which policies can be impartially implemented. Such differences, in turn, determine whether the same policy will work across two or more countries.

Three such examples of idiosyncratic actions will serve to demonstrate the care that must be exercised when engaging in comparative policy research.

- Canada's and Australia's competent ministers can often count on majority support in the Parliament and have the authority simply to promulgate significant changes in the law—often through regulatory action. The fact that they increasingly choose not to do so, and that they are apt to consult extensively with affected groups is a rather recent phenomenon—as is the increasing involvement of the courts in immigration as the rights of immigrant groups to be formally consulted are becoming increasingly institutionalized.

- Germany, unhappy with the incidence and growth in "Schwarzarbeit,"[99] may implement a national worker permit system that requires that the bearer's picture be affixed on it, but only for persons employed in selected industries (such as construction, cleaning, and low-skill services) where the incidence of unauthorized employment is thought to be highest. Notably, those employed in these industries would be the only workers required to carry these identification cards on their person and present them upon demand.

[98] It is likely that the proliferation of open-air labor pools reflects precisely the diversification of illegal immigration sources within Mexico that several authors have observed in the post-IRCA period (see especially Bean et al., 1990, and Cornelius, 1990a).

[99] Loosely translated as the underground economy. It includes many usually legitimate but undeclared economic activities.

Sensitivity about the idiosyncracies of various political systems has thus alerted us to focus on only those "lessons" that are transferable. The filtering this sensitivity imposes has strengthened our confidence on many of the themes that were identified in last year's report. As was noted in that report, **Europeans view sanctions primarily as a labor market control measure**. They do not ask sanctions to be the first line of defense against illegal immigration. In addition, Europeans are very aware of the need to be consistent in their enforcement policies and to continue to portray the fight against unauthorized work as critical elements of the legal system's response to the growth in the underground economy.[100] In this regard, Germans in particular are concerned that the official tolerance of unauthorized employment from Eastern Europe will undermine support for the rule of law and will make it more difficult than it already is to obtain convictions for violations of the prohibition of employing unauthorized aliens.

Given these caveats, two matters merit particular attention at this juncture. The first is the growth in subcontracting. Europeans are extremely concerned about this trend, particularly in that it allows employers flexibility to expand and contract without any of the financial consequences attached to releasing long-term employees. Contractors are also under scrutiny for facilitating the employment of unauthorized workers and contributing to the growth of the underground economy.

In some respects, some of the Europeans' concerns are also cause for some concern in the United States. Our analysis of the GAO data indicates increasing employer reliance on contractors, particularly by those who are "feeling" various effects from sanctions. Contractors acting as middlemen in agriculture and other low wage sectors are often identified as the catalysts for turning certain industries and employment sectors into bastions of employment by foreign-born workers—legal and illegal (Martin, 1988; Griffith and Runsten, 1991). To the extent that this is a natural reaction to shrinking labor pools of authorized workers it might be a welcome development. And in any event, the growth in subcontracting is a longer-term development that permeates many sectors and allows employers the necessary flexibility to deal with the complexities of tax and labor laws, as well as uncertainties in product demand, with few problems. If, however, such intermediaries become the instrument for shifting the IRCA employment eligibility verification burden to others, in addition to being responsible for turning certain sectors into enclaves for one ethnic group or another,[101] then there might be cause for continued scrutiny of the process.

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[100] Concern about the underground economy focuses primarily on the evasion of contributions to the social benefit infrastructure which often swells employer costs by more than 50 percent over actual wages. The illegality of employing an unauthorized alien per se is clearly of secondary importance (Papademetriou, 1990; Snowden, 1990; Martin, 1990).

[101] Such enclaves often "remove" these jobs from the open-air job market. Hiring then is done almost entirely within the ethnic community. Employer appreciation for what they view as the aliens' "superior work habits" serves to "close" the labor market for native workers (Griffith and Runsten, 1991:12).

The most significant "lesson," however, regards the enforcement of sanctions. Persistence in enforcement, consistency in the application of the law, and patience about its results are not only the hallmarks of the European experience; they are also the indispensable ingredients to maintaining effective pressure on employers to comply with the necessary restrictions on the employment of aliens and persuading government prosecutors of the need to devote the necessary resources to prosecute violations.

The Future

The goal of all law enforcement is to increase the voluntary compliance of the targetted group. Considering limitations in the resources available for the enforcement of both IRCA and FLSA, it is important to do so as efficiently as possible.

If U.S. workers are to receive the full benefits from the enforcement of both the IRCA and FLSA statutes, we must understand the context in which the present system operates and its current impact on employer behavior. Given the somewhat different missions[102] of the Departments of Justice and Labor, reaching a shared understanding about IRCA compliance has been slow. As the Task Force on IRCA-Related Discrimination points out, "[t]he two agencies have not established common guidelines for conducting inspections, nor have they agreed to consistent procedures for assessing compliance" (1990:49). Clearly, improving the coordination of the two agencies' efforts would certainly improve both our ability to enforce the law and assess its effectiveness.

Linking case-level information between the Employment Standards Administration and the INS would permit each agency to target its enforcement actions more effectively, and thus allocate its resources more efficiently. The absence of both such a linkage and better research measures of the impact of enforcement policies seriously impedes exploring fully the relationship between unauthorized employment and violations of other labor laws.[103]

Of course, the systematic analysis of these relationships cannot rely on administrative records alone. It will require a great deal of additional location- and industry-specific information from a wide range of other sources. Indicators of the strength of the local economy, the prevalence of aliens and/or unauthorized workers in the local labor market, and other

[102] The mission of the INS Division of Investigations is to locate and deport unauthorized aliens; that of ESA/WHD is to protect the wages and working conditions of **all** workers. Both agencies attempt to accomplish their respective task by regulating the behavior of employers.

[103] Among the enforcement variables that might be brought into the equation are the proportion of firms contacted by enforcement officials, the proportion of cases prosecuted, backwages recovered and fines collected, and enforcement hours and other resources spent in each labor market. We are developing a more systematic strategy for the study of labor law violations that combines data from the ESA files with other labor market information in preparation for the third employer sanctions report.

relevant factors are essential elements to a meaningful assessment of compliance behavior.

The issue of wages is particularly relevant because one of the most frequently made and most enduring assertions about employer sanctions is that, if they are effective, we should be able to observe significant wage changes in the sectors and local labor markets in which illegal aliens concentrate. But while the findings of the GAO's 1988 and 1989 national surveys imply that IRCA's provisions have led some employers to increase wages, many field studies clearly do not find evidence of such increases.

In an effort to assess independently whether the imputed relationship has materialized, we are presently undertaking research that focuses on two key questions:

- Has IRCA had a significant impact on U.S. labor markets as measured in the wage growth of unskilled workers?
- What are the separate effects of the employer sanctions and legalization components of the law?[104]

We are now developing a rigorously specified, econometric model of the determinants of production workers' wages in metropolitan markets and will employ a statistical analysis as a starting point to answering these questions. The investigation uses a large data base developed explicitly for this purpose. The data base covers approximately 100 labor markets and focuses on the critical period 1987-1990.

In the end, assessing the true effectiveness of IRCA from a policy perspective will continue to be hampered by the lack of systematic information about the role of **counterfeit documents** in employer compliance behavior—an issue which is as difficult to quantify and control as the number and control of illegal aliens themselves. This is clearly one of the most challenging enforcement issues in the post-IRCA environment. The 1990 Immigration Act's attention to this problem is certainly a step in the right direction.

[104] See *The President's First Report* (President's Report ,1991:Chapter 14) for an extensive theoretical discussion of that relationship.

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